

# **Ofcom Broadcast Bulletin**

**Issue number 103  
25 February 2008**

## Contents

Introduction	4
<b>Standards cases</b>	
<u>In Breach</u>	
<b>EastEnders</b> BBC1, 13 November 2007, 19:30	5
MTV, MTV2, MTV Dance, MTV Base, MTV Hits, VH-1, VH1-Classic Various dates 2007	8
<b>Note to Broadcasters:</b> <b>The broadcast of sexually explicit ‘free-to-view’ material by encrypted ‘adult’ channels</b>	10
<b>RHF Productions Ltd</b> Red Hot Amateur, 26 July 2007, 22:00; Fantasy 1, 26 July 2007, 21:30	11
<b>18 Plus Movies Promotion</b> British Sky Broadcasting, 29 August 2007, 22:00	16
<u>Resolved</u>	
<b>The Alan Titchmarsh Show</b> ITV1, 4 October 2007, 15:00	18
<b>Sarah Kennedy</b> BBC Radio 2, 24 October 2007, 06:00	21
<b>Saturday Early Breakfast</b> Dream 100 FM, 3 November 2007, 06:30	23
<b>Fairness &amp; Privacy cases</b>	
<u>Upheld</u>	
<b>Complaint by Mr Paul Anthony</b> The James Whale Show, talkSPORT, 26 April 2007	25
<u>Partly Upheld</u>	
<b>Complaint by Mrs M on behalf of her daughter, Miss M</b> East Midlands Today, BBC1, 30 April – 4 May 2007	28

Not Upheld

<b>Complaint by Dr David Clarke</b>	33
The British UFO Mystery: Stranger Than Fiction, Five, 1 November 2006	
<b>Complaint by Tesco Plc brought on its behalf by Carter-Ruck solicitors</b>	43
Channel 4 News, Channel 4, 10 October 2006	
Other programmes not in breach/outside remit	68

## Introduction

Ofcom's Broadcasting Code ("the Code") took effect on 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). This Code is used to assess the compliance of all programmes broadcast on or after 25 July 2005. The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

The Rules on the Amount and Distribution of Advertising (RADA) apply to advertising issues within Ofcom's remit from 25 July 2005. The Rules can be found at <http://www.ofcom.org.uk/tv/ifi/codes/advertising/#content>

From time to time adjudications relating to advertising content may appear in the Bulletin in relation to areas of advertising regulation which remain with Ofcom (including the application of statutory sanctions by Ofcom).

It is Ofcom policy to state the full language used on air by broadcasters who are the subject of a complaint. Some of the language used in Ofcom Broadcast Bulletins may therefore cause offence.

## Standards cases

### In Breach

#### EastEnders

BBC1, 13 November 2007, 19:30

---

#### Introduction

In this episode, a gang attack the 'Queen Vic' pub. They are looking for their ex-member, Jase, who has settled in Albert Square with his son. Jase appears in the pub to stop the violence. He is taken down to the cellar where Billy Mitchell's wife Honey, who is heavily pregnant, steps in to prevent Jase being beaten up. During the fracas, Honey is knocked over and goes into premature labour. Honey is rushed to hospital, where she gives birth, but it is unclear at the end of the episode if the baby has survived.

Ofcom received 78 complaints about the portrayal of violence in this episode. Viewers were particularly concerned about the gang attack in the Queen Vic, the attack on Honey and the birth of her baby, and the general level of violence in the episode as a whole.

Ofcom asked the BBC for comments in relation to Rule 1.3 (children must be protected by appropriate scheduling) and Rule 1.11 (violence must be appropriately limited in programmes broadcast before the watershed).

#### Response

The BBC said that there had been a gradual build-up to this menacing storyline over several episodes. Jase had been released on licence from a three-year prison sentence for football-related violence. On release, he felt his responsibility to his son was incompatible with his involvement in a violent gang. Jase approached the gang leader to tell him of his decision to leave the gang. The BBC believed these episodes alerted the audience to the sinister nature of the gang and the potential for violence. In the previous episode on 12 November 2007, the gang were seen gathering outside the Queen Vic.

At the start of the episode complained of, the broadcaster alerted viewers to its content with an announcement stating *"And first a powerful EastEnders as a peaceful night is shattered. Things are about to turn very ugly at the Vic."* A reprise of the closing scenes of the previous episode was included to ensure that viewers were fully alerted to the impending violence. Although the BBC acknowledged that the violent scenes were relatively prolonged and depicted harrowing experiences for many familiar characters, the main focus was on smashing glasses and furniture. There was little explicit or graphic violence involving people. The BBC believed the individual incidents were within the limits of this drama. At no time was the violence condoned, with a number of characters expressing condemnation of it.

The BBC said that only one in twenty episodes broadcast feature a single storyline, including the episode complained of, whereas a more usual one cuts between about five. Given this feature and the uncertainty about the fate of Honey's baby, the BBC believed this may have added to its intensity and the impact on viewers. In contrast, it

said it only received 11 complaints about the Sunday omnibus edition. Although there was some editing of the violent scenes from that edition, viewers were immediately reassured that Honey had not lost her baby. The BBC said that the high level of complaint for the Tuesday episode was attributable to the viewers' suppositions about the possible outcome of the violence rather than to the violence itself.

While the BBC acknowledged that some parents and carers regard *EastEnders* as appropriate family viewing, those who hold a different view would have been sufficiently aware of the nature of the drama to make an informed judgement based on content advice in listings magazines, which was reinforced by an appropriate on-air announcement and a carefully-calculated opening scene.

For these reasons, the BBC considered that this episode was compliant with the requirements of Rules 1.3 and 1.11 in relation to the scheduling of material inappropriate for children and depiction of violence.

## Decision

Ofcom notes that the BBC had edited out around 20 seconds from the gang attack on the Queen Vic in the Sunday omnibus edition when viewers knew in this programme that Honey's baby had survived. The BBC believe this may have had a bearing on the amount of complaints it received. However, the vast majority of complaints received by Ofcom concerned the gang attack and the general level of violence in the Tuesday episode. Out of 78 complaints received for the Tuesday episode, only 13 viewers specifically mentioned the apparent 'death' of Honey's baby as being a contributory factor to their concern at the amount of violence in this episode.

Rule 1.11 requires that violence must be appropriately limited before the watershed and must be justified by context. In April 2007 (Broadcast Bulletin 83), in light of its concerns about the apparent increase in the use of violence in soaps, Ofcom reminded broadcasters of the need to ensure that violent content in soaps was treated with particular and due care, especially in relation to Rule 1.11.

Although *EastEnders* is not made specifically for children, it does attract a significant child audience and any portrayal of violence needs to be carefully considered with this in mind. The programme started with the gang attack on the Queen Vic. This involved a sustained, intense and high level of violence, destroying parts of the pub with hammers and bottles and glasses smashing into the furniture, to intimidate the locals, some of whom were injured. This was a persistent attack on both people and property. The gang then threatened the locals resulting in one of them being beaten up. Although the actual assault was only partly seen in long shot, it was clear the person had sustained some injuries. The culmination of this sequence was the confrontation between Jase and the gang in the pub cellar when Honey walked into a highly volatile situation as it was clear one of the criminals was high on drugs. She was then knocked down during a fight and went into labour. These scenes dominated the first 10 minutes of the episode.

Regular viewers would have been aware of the circumstances surrounding this storyline and, given this context including the build-up, an attack on the Queen Vic was not entirely unexpected. Individually many of the scenes were carefully shot to avoid showing graphic violence; however, the initial scenes of the gang running amok in the pub was a sequence of sustained violence. When viewed in conjunction with the assault and scenes in the cellar, this contributed to the overall effect of an extended sequence dominated by violence. Rule 1.11 requires that broadcasters

appropriately limit violence, whether verbal or physical, before the watershed. In Ofcom's view the violence was not appropriately limited for this time of the evening when many children are available to view television. Given the portrayal of the extended sequence in the pub and the sustained tone of intimidation and menace, which dominated a substantial part of this episode, we concluded that this episode was in breach of Rule 1.11.

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling should be judged according to a variety of factors including:

- the nature of the content;
- the likely number and age range of children in the audience;
- the start time and finish time of the programme;
- the nature of the channel and the particular programme; and
- the likely expectations of the audience for a particular channel.

Regular viewers of *EastEnders* are aware that this soap deals, on occasions, with tough, social issues. This is balanced, however, with the expectation that it will be suitable for children to view, who form a significant minority of the audience. Content advice may be useful in providing viewers with information about stronger storylines and we note some was given at the start of the episode. However, in Ofcom's view, the information supplied did not help to prepare viewers adequately for the violent and intense scenes which followed. Also providing this information does not, in itself, relieve broadcasters of a duty to ensure that material is appropriately scheduled. Therefore we considered, on balance, that the violent content and its duration exceeded many viewers' expectations for a drama which is transmitted an hour and a half before the watershed at 19:30 on BBC1 when children are likely to be viewing. Ofcom, therefore, concluded that the episode was also in breach of Rule 1.3.

#### **Breach of Rules 1.3 and 1.11**

*MTV, MTV2, MTV Dance, MTV Base, MTV Hits, VH-1, VH1-Classic, Various dates 2007*

---

## **Introduction**

Section 1.2 of Ofcom's Rules on the Amount and Distribution of Advertising ("RADA") requires that there be no more than 12 minutes of advertising in any one clock hour. This obligation is derived directly from the European Television Without Frontiers Directive, which binds the United Kingdom. A review of advertising minutage monitoring reports indicated that, across these MTV channels, during the period 25 June to 2 September 2007, this limit had been exceeded on a number of occasions. On nine of these occasions the apparent excess was 15 seconds or less. However, on six occasions it was four or more minutes and in one case eight minutes.

Ofcom requested comments from MTV under Section 1.2 of RADA.

## **Response**

MTV Networks Europe ("MTV"), which holds the licences for all the MTV channels involved in this investigation, confirmed that the minutage limit had been exceeded within individual hours on a number of occasions. It stated that three of these incidents were the result of mistakes made during the implementation phase of a new computerised advertising airtime booking system and an additional advertising break had been inserted just prior to transmission. The impact of the change on total advertising minutage in the relevant hours had not been checked and an excess had occurred as a result. The broadcaster had subsequently retrained the relevant staff and improved its procedures to ensure that all clock hours were checked regularly prior to transmission. It was also looking to implement an automated check within the relevant computer system to prevent the scheduling of more than 12 minutes in any one clock hour.

MTV explained that the remainder of the incidents had been due to programming either over or under running due to a mismatch between the original, planned, scheduled duration and the duration as actually delivered for transmission. This had had the knock on effect of pushing or pulling advertising breaks into the following or preceding hours, causing the total advertising minutage in these hours to exceed the 12 minute maximum. Transmission staff had failed to make appropriate last minute adjustments to the programming and the overall schedule to prevent such excesses occurring. This problem was being addressed by a combination of measures, including having more precise programme times, the introduction of 'buffer zones' around the top of each hour and avoiding scheduling advertising breaks close to this point. This would mean that if programming over/under ran, advertising breaks should still be transmitted in the intended hour.

## **Decision**

Ofcom noted the explanations provided by MTV for the minutage excesses. In particular, that the majority of excesses had been the result of break 'slippage'. This had had the effect of leaving one hour with more than 12 minutes of advertising but with the preceding/following hour being reduced by the same amount. Overall daily minutage appeared to have been within RADA limits on the days in question.

Whilst welcoming the steps taken by MTV to remedy the issues identified, Ofcom noted that the errors had continued over an extended period and had also in a number of cases involved significant excesses over the 12 minutes per hour permitted. Despite the assurances given that steps were being taken to prevent recurrences, errors had continued to occur.

Ofcom has therefore decided formally to record a breach of RADA 1.2. In the circumstances, and in particular the significant number of breaches involved and the time taken effectively to remedy the causes of these errors, the licensees should note that if further breaches occur, Ofcom may need to consider further regulatory action.

### **Breach of RADA 1.2**

## Note to Broadcasters

### **Note to Broadcasters: the broadcast of sexually explicit 'free-to-view' material by encrypted 'adult' channels**

---

In Broadcast Bulletin 95 (published 22 October 2007), Ofcom highlighted its concerns about compliance by channels that transmit in the 'adult' section of the Sky Electronic Programme Guide ('EPG'). In that Bulletin, which made specific reference in findings to 'babe-style' channels, Ofcom also noted its serious concerns about some free-to-air content on encrypted channels. The following findings are the result of investigations into this area. In addition to the cases detailed below, Ofcom has a number of other on-going investigations. These concern both encrypted and unencrypted channels in the 'adult' section of the EPG. Some may result in consideration of further regulatory action.

All providers of encrypted channels which also offer free-to-air content should study the findings below carefully. Ofcom strongly reminds all such channels that the broadcast of sexually explicit material within free-to-air content is not normally acceptable and that any breach of a similar nature by an encrypted channel in future is likely to result in consideration of further regulatory action. Providers of 'babe-style' channels should also take careful note of these findings for the guidance they provide on compliance with Rules 1.2, 2.1 and 2.3 of the Code.

## RHF Productions Ltd

*Red Hot Amateur, 26 July 2007, 22:00; Fantasy 1, 26 July 2007, 21:30*

---

### Introduction

The *Red Hot* and *Fantasy* group of channels are shown in the 'adult' section of the Sky Electronic Programme Guide ('EPG') and broadcast encrypted sexual material after 22:00. The channels also broadcast 10 minute free-to-air promotions each hour between 22:00 and 00:00 - between encrypted material - which promote content on the station encouraging viewers who are not subscribers to sign up for the service.

Ofcom received complaints about the output of the following:

#### Red Hot Amateur, 26 July 2007, 22:00

A complaint stated that this channel showed full nudity and an erect penis within its free-to-view promotion. The complainant also said one of the female presenters encouraged viewers to watch the *"dirtiest hardcore fucking ever shown on TV"*.

Ofcom noted that the material included various sequences involving sexual activity, including a promotion called 'Rim Junkies', which showed men and women having their buttocks spread apart before their partners' heads approached them from behind, as if about to lick their anuses. There was also an extremely brief image (of a half second or less) of a woman masturbating a man with an erect penis. The language included terms such as *"You'll get nothing but hard fucking all night"* and *"We've got women of all shapes and sizes getting properly fucked"*.

#### Fantasy 1, 26 July 2007, 21:30

A complainant said the channel showed full nudity and simulated sex, with viewers being told women would be seen getting "fucked".

Ofcom noted that the material included various sequences involving sexual activity, including one promotion called 'Man Bitch', which appeared to showcase aggressive sexual behaviour. It contained shots of men being stripped and ordered to perform sexual tasks, including being approached from behind by a woman with a strap-on dildo and, separately, a man being ordered: *"Come lick me out, you bitch."* The language also included a woman in a promotion saying *"Fantasy. I'm dripping with excitement"* and *"I'm Suzy, and you can see me getting fucked good and hard on Fantasy."*

In both the above cases, Ofcom asked the owner of the channels, Portland Media Group ('Portland') to comment on how the content complied with the following Code rules:

- Rule 1.2 (protection of under eighteens);
- Rule 2.1 (generally accepted standards); and
- Rule 2.3 (offensive material to be justified by content).

## Response

Portland said, in general, the content complained about was no stronger than material that had been broadcast on the channels for “over a decade”, without attracting regulatory interest. It believed all of the material was appropriately scheduled bearing in mind protection of under eighteens and that the content was within generally accepted standards for free-to-air content broadcast in the ‘adult’ section of the Sky EPG. Portland added that it considered the material was justified by the context in which it was broadcast.

More specifically, Portland had the following comments on each individual complaint.

### Red Hot Amateur, 26 July 2007, 22:00

The broadcaster did not accept the material breached generally accepted standards, or that the material was not justified by the context, as it occurred on a channel in the ‘adult’ section of the EPG well after the watershed and was interspersed with viewer information about how to purchase a pay-per-view screening of the channel. It felt the content was appropriately scheduled, bearing in mind the protection of under-eighteens.

Portland said the language should be seen in context and felt that the material was not sufficiently strong as to breach the Code. It said the word “fucking” did not appear in every voiceover but was used in line with other free-to-air adult programmes.

However, it accepted that showing a brief image of a woman masturbating a man with an erect penis would not generally be acceptable for broadcast. It said this was an isolated incident and the result of human error, as the image was “so fleeting (approximately a third or half a second in duration)” that the editor and compliance officer missed the material. Portland apologised for this error.

The broadcaster defended the material within the ‘Rim Junkies’ segment. It commented that the sequence was edited together to give an impression of a theme of programming common in the adult genre. It said the sequence was fast paced and did “not actually feature any contact between any actor or actresses’ face and buttocks/anuses”. It added the content did not show any “‘spread leg’ shots or visible genitalia or anuses”.

### Fantasy 1, 26 July 2007, 21:30

Portland reiterated that the material was in line with generally accepted standards for material broadcast free-to-view in the ‘adult’ section of the EPG, being shown after the watershed. It said a warning was given immediately prior to the free-to-air segment which stated:

*“Be aware. The following scenes aren’t suitable for persons under the age of 18 as they contain explicit sexual material, strong scenes of sexual nudity and sexual swear words.”*

With regard to the ‘Man Bitch’ sequence, Portland said it was mindful that overly aggressive sexual behaviour is potentially highly inappropriate. However it considered the sequence did not contain any of the kind of sexual violence that would cause viewers harm or offence. Portland said there was no suggestion any of the performers were engaged – or even appeared to be engaged – in non-consensual activities. It said the promotion was for an encrypted fetish programme,

where there is dominant/submissive role-play which would be in line with audience expectations on any adult channel, but that this was fantasy-based material which did not depict or encourage sexual violence towards non-consenting people.

## Decision

Under the 2003 Communications Act, Ofcom has a statutory duty to protect under-eighteens from harmful or offensive material. Important obligations are placed on broadcasters in Section One of the Code to fulfil this duty. Broadcasters' obligations in this regard do not end after the 21:00 watershed. As was made clear by Ofcom in November 2007, when imposing a £25,000 financial penalty against Connection Makers for sexually explicit material broadcast on *Babeworld TV* (see [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/babeworld.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/babeworld.pdf)) not all under eighteens stop viewing at 21:00 and therefore broadcasters must be mindful that Rules 1.2 and 1.3 (children must be protected by appropriate scheduling) may continue to apply in programmes broadcast after this time, particularly with respect to material shown relatively close to the watershed.

In addition, under the Code, generally accepted standards must be applied to the content of programmes (Rule 2.1). In applying these standards, broadcasters must ensure that material that may cause offence is justified by context (Rule 2.3). Context can include (but is not limited to) the editorial content of the programme, the channel on which it is shown and the time of broadcast, the expectation of the likely audience and any information broadcast before the programme about the nature of the content. It also includes the effect of the material on people who may come across it unawares.

Ofcom accepts that a free-to-air promotion for encrypted material within the 'adult' section of the EPG will contain a certain amount of sexual activity and that viewers of these channels might expect some depiction of such content. While a substantial number of viewers may object to such content being aired at all, to curb *all* visual or verbal references to sexual activity would not in Ofcom's opinion be in line with the generally accepted standards for such channels. Additionally, the specific context for such references (including the time of broadcast, location of the channel within the 'adult' section and the expectations of the audience) would allow sexual activity to be depicted to some degree. However, it is the extent to, and manner in, which sexual scenes are portrayed that are the most important factors in deciding whether this material complies with Rules 1.2, 2.1 and 2.3 of the Code.

It is a requirement of the Code that content which is considered to be 'adult-sex' material must be pin protected and encrypted (Rule 1.24). In both these cases, Ofcom did not consider the content complained of to be 'adult-sex' material. This decision was reached taking all the relevant circumstances into account, including the sexual explicitness and nature of the images (including such factors as their length and editing) and language, the purpose of broadcasting this material and the overall context in which it was broadcast.

### Red Hot Amateur, 26 July 2007, 22:00

In this instance, the content included the following on screen graphic:

*"WARNING! The following programmes are unsuitable for persons under the age of 18. They contain strong scenes of sex, nudity and sexual swear words."*

The sexual nature of the content was broadly split into two forms:

- 'background' material of topless women gyrating and touching their breasts as part of the channel's information provision (subscription options); and
- promotions for encrypted programme content, where a variety of sexual scenes were shown.

The offensive language was not particularly prominent and, although it was scripted and pre-recorded material that was presented by topless females, it appeared unlikely that it would have exceeded viewers' expectations of a channel found within the 'adult' section of the EPG.

However, Ofcom was concerned about the content of the 'Rim Junkies' promotion. It repeatedly showed the same situation, involving different couples: either a man or a woman had their trousers or skirt removed by their partner, who then approached the participant from behind to spread their bottom and put his/her face between their open buttocks. While there was no explicit nudity or actual contact between the actors' faces and the anuses of the other participants, the whole segment had a graphic sexual element to it. The variety of long-shot and close-up images left viewers in no doubt as to the nature of the acts depicted and the intention of the 'participants'. On two occasions, performers in the segment were shown to spit between the open buttocks of their partners. These images, quickly edited together, with reaction shots depicting personal pleasure, sharpened rather than diminished the graphic effect of the sequence.

Ofcom judged that the channel took measures to protect under eighteens through appropriate scheduling of the sequence. However, we concluded that it went beyond generally accepted standards of what is acceptable to broadcast free-to-air, even in a channel within the 'adult' section of the EPG and shown over an hour after the watershed.

With regard to the brief image of masturbation (erect penis), we acknowledge both the apology made by Portland and that such a brief sequence could have been missed by a compliance officer. However, the use of material potentially suitable for broadcast only under encryption in promotional trails shown free-to-air requires particular care, precisely to avoid the inclusion of inappropriate material, however brief. We therefore found this sequence, although extremely limited, had not complied with generally accepted standards.

In summary, both the 'Rim Junkies' promotion and the promotion containing the image of male masturbation breached Rules 2.1 and 2.3 of the Code.

#### Fantasy 1, 26 July 2007, 21:30

Regarding the material showing sexual activity between women, Ofcom noted that, again, the sexual nature of the content complained of was broadly split into two forms:

- 'background' material of two semi-naked women lying on a floor touching their breasts, as part of the channel's information provision (subscription options and payment details); and
- promotions for encrypted programme content, where a variety of sexual scenes were shown.

The 'background' material in the information provision sections showed images of each woman licking and touching the body of the other and sucking and licking dildos. These 'background' images in the promotions, in that they focused on the women's bodies and each woman fondling the other, were very sexually suggestive and were in Ofcom's view inappropriate to be broadcast at 21:30 (so soon after the 21:00 watershed). Additionally, the strong language used in this self-promotion segment contained a very strong sexual element which was inappropriate for broadcast at 21:30. The licensee also failed to protect adequately under-eighteens from potentially harmful and offensive sexually explicit imagery and offensive language and was in breach of Rule 1.2.

We take into account Portland's view that the 'Man Bitch' sequence showed dominant and submissive sexual behaviour rather than aggressive sexual behaviour or allusions to sexual violence. There was also no very explicit nudity shown or actual physical contact between the performers. However, the sequence contained the overt use of fetish accessories. Images also included a man and, separately, a woman, approaching their partners from behind to spread the cheeks of their buttocks and put his/her face between them. The entire 'Man Bitch' sequence was unacceptable for broadcast on a free-to-view channel, even one located in the 'adult' section of the EPG. Considering the time the material was broadcast, the Fantasy channel also failed to protect adequately under-eighteens from potentially harmful or offensive material. This sequence therefore breached Rules 1.2, 2.1 and 2.3.

The Licensee should pay particular attention to the 'Note to Broadcasters' at the beginning of this Broadcast Bulletin.

**Red Hot Amateur, 26 July 2007, 22:00 – Breach of Rules 2.1 and 2.3**

**Fantasy, 26 July 2007, 21:30 – Breach of Rules 1.2, 2.1 and 2.3**

## 18 Plus Movies promotion

*British Sky Broadcasting, 29 August 2007, 22:00*

---

### Introduction

*18 Plus Movies* is a pay-per-view encrypted film service operated by British Sky Broadcasting (“Sky”) which shows adult material of a sexual nature, and is broadcast within the ‘adult’ sector of the Sky electronic programme guide (“EPG”). Before these films are broadcast late at night, a trail of different film clips is broadcast without encryption. Ofcom received a complaint that the content of the free-to-view trail broadcast on 29 August 2007 showed explicit sexual scenes.

Ofcom reviewed the material and asked Sky to comment in relation to the following Code rules:

- Rule 2.1 (generally accepted standards); and
- Rule 2.3 (material that may cause offence must be justified by context)

### Response

Sky said that the free-to-view trails on 18 Plus Movies are designed to promote films for potential customers. A montage of clips is shown which provides a summary of the editorial ‘story’. Sky also said that clips of ‘key’ scenes are carefully selected and edited to demonstrate what customers could expect to see. Also before this promotion, the broadcaster said a verbal and visual warning was given which stated:

*“The following promotion contains scenes of a sexual nature [and strong language (said in voiceover only)] and is only suitable for viewing by people of 18 years of age and over”.*

Sky said the sexual scenes which were the subject of the complaint were limited to extracts of no more than a few seconds in duration, interspersed between other clips of the relevant films. It said the entire trailer lasted only one minute forty seconds, the remaining twenty seconds of the promotion comprising the warning and programming listing information, thus minimising the effect of the material and the likelihood of a viewer coming across the material unawares.

Sky added that the channel is located within the ‘adult’ sector of the EPG, and is clearly a dedicated adult service. Accordingly, it considered viewers would be in no doubt as to the nature and content of the channel and, given that the promotion was shown well after the watershed (from 22:00), the content was appropriately scheduled.

The broadcaster said that material was carefully edited to ensure it met with Rule 2.3 and that it believed the content was in line with viewer expectations on the promotional and other free-to-view material available on other services in the ‘adult’ sector of the EPG. In addition, it felt the name of the channel and the clear warning given immediately before the complained of material would have alerted viewers to the nature of the material to be shown and minimised any potential offence.

However, in light of the complaint, and Ofcom’s general concerns regarding free-to-view material in the ‘adult’ sector of the EPG (communicated to Sky shortly after it had been informed of the complaint), Sky removed the promotion featuring these

trailers from the service and it has not since been broadcast. In addition, in response to Ofcom's general concerns, Sky said it is conducting a review of the content of its free-to-view promotions on the channel.

## **Decision**

In this case Ofcom did not consider the content complained of to be 'adult- sex' material as referred to in the Code. This decision was reached taking all the relevant circumstances into account, including the sexual explicitness and nature of the images (including such factors as their length and editing) and language, the purpose of broadcasting this material and the overall context in which it was broadcast.

Under the Code 'generally accepted standards' must be applied to the content of programmes (Rule 2.1). In applying these standards, broadcasters must ensure that material which may cause offence is justified by context (Rule 2.3). Context can include (but is not limited to) the editorial content of the programme, the channel on which it is shown and the time of broadcast, the expectations of the likely audience, and any information broadcast before the programme about the nature of the content. It also includes the effect of the material on viewers or listeners who may come across it unawares.

In this case, Ofcom notes the promotion was preceded by information which alerted viewers to its sexual content and that it was broadcast late in the evening on a channel within the 'adult' sector of the EPG and it took these factors into account.

However, while the trailer lasted only one minute forty seconds, it was shown on a loop between repeated listings information and the warning. Therefore the chance that viewers could come across the material unawares was increased.

The material itself consisted of a montage of brief sequences where naked and semi-naked actors engaged in representations of various sexual activities, including oral sex and intercourse. This was interspersed with voiceover promoting the channel and its content.

Ofcom accepts that a promotion for encrypted material within the 'adult' sector of the EPG will contain a certain amount of sexual activity. Nevertheless, even though the individual shots lasted no more than a few seconds, the trailer included a number of portrayals of sexual intercourse which largely focused on the actors' bodies and shots of other sexual activity. Although not very explicit, the frequency and nature of the images went beyond what was acceptable free-to-air.

Ofcom welcomes the action taken by Sky to remove the trailer from transmission, and its decision to review the material contained in unencrypted promotions on *18 Plus Movies*. However, it was in breach of the Code.

## **Breach of 2.1 and 2.3**

## Resolved

### The Alan Titchmarsh Show

ITV1, 4 October 2007, 15:00

---

#### Introduction

*The Alan Titchmarsh Show* is a daily magazine entertainment programme that aims to celebrate the 'best of British'. Featured items have included food and wine, fashion, showbiz, music, gardening, current affairs and consumer issues. The programme is broadcast either live or as live.

Part of the edition in question featured an interview with the television and radio presenter Gloria Hunniford and the former editor of 'The Sun', Kelvin MacKenzie. The discussion took place the day after a high profile speech in the House of Commons by Conservative leader David Cameron. This covered various topical issues including a potential EU referendum, inheritance tax and the conduct of the Prime Minister Gordon Brown in relation to a possible general election.

Alan Titchmarsh asked Mr MacKenzie whether he felt that the speech by Mr Cameron would win back 'Sun' readers. Mr MacKenzie said that he felt that the deciding issue would be the EU referendum. He put forward the view that people did not want the country being controlled by "*a group of bureaucrats in Brussels*". Gloria Hunniford raised the issue of inheritance tax levels, suggesting that "*anything David Cameron does towards giving people a benefit in terms of IHT is a winner*". There was then a discussion of the political tactics deployed by Gordon Brown and David Cameron in relation to a possible election. Kelvin MacKenzie expressed a forceful view that Gordon Brown had mishandled the situation and had damaged his own credibility as a leader. In his view, David Cameron had the Prime Minister "*on the run*" and there was "*nothing going for Brown right now*". Recent events had, in his view, shown Mr Brown to be "*a liar over the referendum and ... a ditherer on an election*". Gloria Hunniford praised David Cameron's speech giving skills, having made his speech without the aid of an autocue.

Ofcom received complaints from two viewers objecting to what they saw as the programme's failure to provide a balance for the political views of these guests.

Ofcom asked Channel Television, who comply this programme on behalf of ITV1, to comment on this part of the broadcast in relation to Rule 5.5 (due impartiality on matters of political or industrial controversy and matters relating to current public policy).

#### Response

Channel Television confirmed that the series had not included countervailing views on the desirability of an EU referendum or concerning the question of whether inheritance tax rates were too high. It stated that this was an inadvertent error on its part. In any event, in its view, Mr MacKenzie's comments had been a representation of the likely views of 'Sun' readers rather than his own views. The view that Britain should not be governed by bureaucrats in Brussels was a common view across the political spectrum. Ms Hunniford's raising of the subject of inheritance tax was not

due to any right-wing, let alone party political bias, but because inheritance tax had developed into a matter of pressing concern to people of all political persuasions. In relation to the Prime Minister's conduct in relation to a possible election, Mr MacKenzie simply gave a detailed analysis of the political tactics being deployed by both Mr Cameron and Mr Brown, and the likely outcome if the Prime Minister delayed further in calling an election. Ms Hunniford had indeed praised Mr Cameron's party conference speech, but was speaking as a veteran broadcaster, who (by her own admission) regularly relies on an autocue to do her job. She was therefore impressed by Mr Cameron's ability to speak for over an hour with no autocue. The production team had attempted to get a government representative to appear on the programme but no one was available to discuss these matters. Generally, the daily debate across the series has covered a wide variety of topics and featured guests of all mainstream political persuasions.

In addition, Channel Television stated that the episode of the series shown two days earlier included an interview with the actor Richard Wilson, a well-known and longstanding Labour supporter. Richard Wilson, in his interview, praised the Prime Minister, Gordon Brown. This item had prompted two viewers to complain that it was an advertisement for the Labour Party. It stated that there had also been material favourable to Gordon Brown in episodes shown on 25 September and 17 October 2007.

It argued that it was important to recognise that The Daily Debate section of the programme was simply one strand within the programme, typically running at around 6 to 7 minutes, which may address a number of topical subjects. The expectations of the series should, it felt, take account of this context not least that it is not an overtly political discussion, more "*an argument one might have in the pub*".

Channel Television stated that as a result of the complaints it had reviewed its compliance system in relation to this series, in particular in relation to ensuring that due impartiality was maintained. New measures it had agreed included:

- The production team would ensure a suitably wide range of guests to facilitate proper debate. If the subjects for discussion were known sufficiently in advance, the guests will be chosen in the light of their differing views.
- The presenter would be specifically briefed to encourage and facilitate debate with a view to ensuring relevant alternative points are presented. The presenter was equipped with an earpiece which enabled the Editor (with compliance in attendance) to advise him during the programme on compliance issues should they arise.
- Careful note would now be made on a daily basis not just of the guests and the topics covered, but whether it was believed that due impartiality had been maintained within each programme. Should it be considered that it had not, the topic in question would be returned to later in the series to ensure alternative relevant views were included.
- Channel Television would continue to provide compliance staff for each live show and 'as-live' recording.

The broadcaster also stated that the compliance of the series would be kept under constant and careful review.

## **Decision**

Ofcom's Code requires that "due impartiality" is maintained on matters of political controversy. The Code explains that the term "due" is important and means adequate or appropriate to the subject and nature of the programme. So "due impartiality" does not mean an equal division of time has to be given to every view or that every argument has to be represented. Further, the approach to due impartiality may vary according to a number of factors such as the nature of the subject, the type of programme and the likely expectations of the audience.

Due impartiality may be achieved in a number of ways but how it is maintained is an editorial matter for the broadcaster. Programmes that follow a daily news agenda often have to deal with a wide range of subject matters over a period of time. It is important in such circumstances, where programmes handle controversial matters and where alternative views are not readily available, that the interviewer appropriately challenge the guests.

In this case, we note that the programme over a short period had guests offering views from differing parts of the political spectrum, helping the broadcaster achieve due impartiality. However, in the current case the guests were permitted to present their views on specific issues mainly unchecked and without challenge. In such circumstances, it is important that the broadcaster ensures guests' views are adequately challenged and interviewees are not permitted to promote their opinions in a way that potentially compromises the requirement for due impartiality.

Given the range of guests and views the broadcaster has provided over a period and the steps it has taken to ensure appropriate compliance for dealing with such subjects in the future, Ofcom considers the matter resolved.

## **Resolved**

## **Sarah Kennedy**

*BBC Radio 2, 24 October 2007, 06:00*

---

### **Introduction**

In her early morning radio show, the presenter Sarah Kennedy talked about an appeal that had recently been launched to help ensure children were safer on their journey to and from school during the dark winter months by wearing high visibility clothing. The line of discussion was elaborated on further by the presenter, who said she had almost run over a black pedestrian as his dark clothes made him 'invisible'. She continued by adding *"it's lucky he opened his mouth to yawn or do something and I saw him"*. A listener contacted Ofcom to complain, stating that this was an unnecessary and offensive comment.

Ofcom asked the BBC to comment with reference to Rule 2.3 (generally accepted standards)

### **Response**

The BBC replied by stating that there was no intention to cause racial offence. They said that: "Such off-the-cuff anecdotes and observations are typical of Ms Kennedy's style. She has a reputation for straight talking and that is part of the reason why she has a large and loyal group of listeners." They considered that the presenter's comment about black people being harder to see in the dark was a "...statement of fact and that was the context in which it was made."

The BBC however accepted that sensitivities surrounding race and racial stereotypes were such that this comment was inappropriate for inclusion. They recognised the potential of this comment to cause offence to listeners and advised that, with hindsight, an apology should have been broadcast. They expressed regret that this had not taken place at the time and did consider broadcasting an apology in a later programme. However this idea had been rejected through concern that this may have had the effect of "perpetuating the original offence". Instead, Radio 2 issued a public apology by means of a press release, which was subsequently reported in the national press.

The BBC had received 15 complaints from listeners and had written back to them, advising them of the apology.

### **Decision**

Rule 2.3 of the Code requires broadcasters to ensure that material which may cause offence is justified by the context. The broadcaster argued that the comments were not racially motivated.

Ofcom does not assess whether behaviour or language is racist; this is a matter for the relevant authorities, such as the police. However, Ofcom does require that generally accepted standards are applied in radio programmes. It is concerned that such a comment with its potential to cause offence had been included in a live broadcast without due consideration for the way it may have been interpreted by listeners and without any further explanation or apology within the programme itself.

However we note the broadcaster's acknowledgement that the comment was inappropriate and the full public apology which was issued. On balance, therefore, we consider that the matter is resolved.

**Resolved**

## **Saturday Early Breakfast**

*Dream 100 FM, 3 November 2007, 06:30*

---

### **Introduction**

During the Saturday Early Breakfast output, the presenter said:

*"...I've just had a text here from Matt. Matt say's can you please play me a classic, classic tune to keep him awake, as he's working in Harwich at the moment. Yep, Matt, I'll play your song next at Dream 100."*

Around ten minutes later, the presenter gave the following direct 'call to action':

*"It's an early Saturday morning and if you are up at work then I will do my best to get you a mention – six, double four, double seven – start your message with the word, 'dream', if you want to text me this morning."*

The number provided was a premium rate SMS text service and, in this case, charged at 25p per message.

A listener looked at the studio webcam, provided on Dream 100's website and saw that there was nobody in the studio. He said that he then phoned the broadcaster but nobody answered his call. It appeared that listeners had been invited to text in when there was no chance of having requests played or being mentioned on air.

Given that this output was pre-recorded ('automated') material, we asked the broadcaster for its comments on the matter.

### **Response**

The broadcaster stated that the number promoted in this case was often used by Dream 100 and would be known by many regular listeners, whether or not it was announced during 'automated' programming. However, it said that the presenter's reference to having just received a text, and the dedication that followed, was recycled material from his live drivetime show on the previous afternoon. Nevertheless, Dream 100 conceded that such output could lead listeners to believe that they could have interacted with the programme, when in fact it was actually pre-recorded.

The broadcaster apologised and said its presenters had been told that they were not to give dedications or promote the station's text number during 'automated' programming. It was disappointed that the presenter in this case - who had recorded his voice-tracks the previous afternoon - had been "in auto-pilot mode and did not go back and correct the error...". Dream 100 added that, while it sought to make its 'automated' output "sound as live as possible", it would never want to mislead or harm its audience.

The broadcaster had therefore conducted a disciplinary investigation with the presenter in question, who had also been the station's Programme Manager and had since left Tindle Radio Ltd, the radio group that owns Dream 100. The importance of avoiding calls to action in 'automated' programming, including the promotion of premium rate services, had also recently been discussed at a group meeting.

Dream 100 provided a log of text messages it had registered between 1 and 5 November 2007, none of which were received during the programme concerned. However, the broadcaster added that, if texts had been received, dedications would have been broadcast when the output went live at 08:00.

### **Decision**

We accept that it is possible that some listeners may know how to contact Dream 100 by using its regular premium rate text service.

However, by promoting the number during the programme and giving the clear impression that someone had just 'texted' in, the broadcaster led the audience to believe that it could interact with the programme. This was not possible, since the programme was pre-recorded. The broadcaster assured Ofcom that it was not station policy to broadcast calls to action during automated programmes and this occurrence appeared to be unintentional. While there is the potential to cause listeners harm – in this case, financial loss - we note that no calls were received and any dedications received would have been aired after the output went live at 08:00.

Ofcom acknowledges that radio broadcasters may wish to ensure their 'automated' programming is of a similar standard to 'live' output. However, this should not be at the expense of ensuring adequate consumer protection. If a broadcaster invites its audience to interact with an 'automated' programme, listeners will believe they can do so, especially if the output appears to be 'live'.

Nevertheless, in this case, although the impression was given that listeners could interact with the presenter, the degree of potential harm was limited. Not only were no texts received but if any messages had been received from listeners they would have ultimately been considered for broadcast, albeit in the following programme. Ofcom acknowledges Dream 100's assurance that this was an isolated incident and the action it has taken to avoid recurrence. We also welcome the broadcaster's apology and the measures it appears to have in place with an aim to ensuring compliance. Taking into account all of the above, Ofcom believes the broadcaster has satisfactorily resolved the matter in this instance.

### **Resolved**

## Fairness and Privacy Cases

### Upheld

#### **Complaint by Mr Paul Anthony** *The James Whale Show, talkSPORT, 26 April 2007*

**Summary:** Ofcom has upheld this complaint of unwarranted infringement of privacy by Mr Paul Anthony.

Mr Anthony complained that his full email address was read out live on air and that the programmes' presenter encouraged listeners to misuse his email address.

Ofcom considered that: Mr Anthony had a legitimate expectation of privacy in relation to the disclosure of his email address in the programme; its disclosure infringed his privacy in it was sufficient to render Mr Anthony identifiable to a wider audience who would not have otherwise been aware that the Paul referred to in the programme was Paul Anthony with that particular email address; and, the disclosure of Mr Anthony's email address was not warranted and it was noted by Ofcom that the broadcaster did not seek to argue that it was warranted.

Ofcom therefore found that Mr Anthony's privacy was unwarrantably infringed in the broadcast of the programme.

#### **Introduction**

On 27 April 2007, talkSPORT broadcast an edition of *The James Whale Show*, a regular phone-in programme presented by James Whale. Calls from members of the public are taken and emails on numerous topics are read out and discussed on air. During this particular edition of the programme, James Whale read out two emails from Mr Paul Anthony, the complainant, who was critical of the programme's content. James Whale read out the first email saying "*I have had an email from [complainants email address] he says 'One of the downsides of commercial radio is the amount of adverts – in the case of this show they are the highlight'". In response to Mr Anthony's criticism, James Whale laughed and said "I hope you get lots of emails". Later in the programme, James Whale read out the second email: "[complainants email address] has just emailed me again and said 'I dare you to read out one of my emails - my guess is that your ego will not allow it'". James Whale followed the quote by saying "Well, there you go".*

Mr Anthony complained to Ofcom that his privacy was unwarrantably infringed in the broadcast of the programme.

#### **The Complaint**

##### **Mr Anthony's case**

In summary, Mr Anthony complained that the presenter, James Whale, read out his full email address live on air and encouraged listeners to misuse his email address. Mr Anthony stated that his email address was confidential and that he had not given the presenter permission to give out this information. Mr Anthony said that talkSPORT's website privacy policy assured him that his personal details would be treated confidentially.

## **talkSPORT's case**

In summary, and in response to the complaint, talkSPORT said that the complainant had sent a series of insulting emails, without provocation, to the station and to James Whale. talkSPORT said that one of these emails was littered with obscene language. However, talkSPORT said that it accepted that Mr Anthony's email address should not have been disclosed on air.

talkSPORT said that it had given Mr Anthony a full apology in writing in which the station expressed how much it regretted what had happened and what steps it had taken to prevent the information being released again.

## **Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment in programmes included in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

This complaint was considered by Ofcom's Executive Fairness Group. In reaching a decision it considered a recording and transcript of the programme and the submissions from both parties.

Ofcom considered Mr Anthony's complaint that his privacy was unwarrantably infringed in the broadcast of the programme in that his email address was disclosed twice in the programme without his permission.

Ofcom recognises that the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted? (Rule 8.1 of the Code).

Ofcom first considered whether or not Mr Anthony had a legitimate expectation of privacy concerning the disclosure of his email address without his prior consent to do so.

Ofcom noted the privacy policy on talkSPORT's website, which states "*We do not disclose information that you may give, such as name, address, telephone number or e-mail address to any outside companies*". It was clear to Ofcom from Mr Anthony's complaint that he took talkSPORT's statement to mean that his email address would be treated confidentially and not be disclosed to a third party (which would include the listening audience). Ofcom considered that, given this policy, Mr Anthony would have had no expectation that his email address, which included his full name as well as email contact details, would be read out in the programme. In these circumstances, Ofcom considered that Mr Anthony would have had a legitimate expectation of privacy in relation to the disclosure of his email address in the programme as broadcast.

Ofcom then considered whether or not Mr Anthony's privacy was infringed in the broadcast of the programme. In this particular case, Ofcom noted that Mr Anthony's email address was read out twice by James Whale. It considered that the disclosure of his email address was sufficient to render Mr Anthony identifiable to a wider audience who would not have otherwise been aware that the Paul referred to in the programme was Paul Anthony with that particular email address. Ofcom concluded therefore that the inclusion of Mr Anthony's email address did infringe his privacy.

Ofcom finally considered whether or not the inclusion of his email address in the programme was warranted. Ofcom noted that there was a history of email exchanges between Mr Anthony and talkSPORT; that one of his emails contained offensive and obscene language; and that Mr Anthony had dared James Whale to read out his email on air. However Ofcom took the view that in the context of the programme, namely a light-hearted regular phone-in programme, the disclosure of Mr Anthony's email address was not warranted and noted that the broadcaster did not seek to argue that it was warranted. Ofcom therefore found that Mr Anthony's privacy was unwarrantably infringed in the broadcast of the programme.

The complaint of unwarranted infringement of privacy in the broadcast of the programme was upheld.

**Accordingly, Ofcom found the broadcaster in breach of Rule 8.1 of the Code.**

**Ofcom has directed talkSPORT to broadcast a summary of this adjudication.**

## Upheld in Part

### **Complaint by Mrs M on behalf of her daughter, Miss M** *East Midlands Today, BBC1, 30 April – 4 May 2007*

**Summary:** Ofcom has upheld this complaint of unfair treatment and partly upheld the complaint of unwarranted infringement of privacy.

Between 30 April and 4 May 2007 BBC1 East Midlands broadcast editions of *East Midlands Today*, a regional news programme. Each edition included an item about teenage pregnancy, and the availability of the morning after pill to school children. The items referred particularly to Lutterworth Grammar School in Leicestershire, which the programme said made the morning after pill widely available to its pupils through a support service. Footage of Miss M, a 16 year old pupil at the school, was included in the items. The commentary over the clip during which Miss M was shown facing the camera referred to "*schoolgirls who think they've put themselves at risk of becoming pregnant*".

Mrs M complained that her daughter was treated unfairly in the news items. She also complained that her daughter's privacy was unwarrantably infringed in both the making and broadcast of the items.

Ofcom found as follows:

- a) Ofcom found that Miss M was treated unfairly in the programmes as broadcast as a result of the use of footage of her that both visually identified her at her school gates and featured her as the focus of footage which referred to "*schoolgirls who think they've put themselves at risk of becoming pregnant*".
- b) Ofcom found that consent was not required to be sought from Miss M for the recording of the footage of her as it was filmed in an open manner, on a public highway and Miss M was not obstructed in any way. On this basis, there was no infringement of Miss M's privacy in the making of the items and consequently it was not necessary for Ofcom to consider whether or not any infringement was warranted.
- c) Ofcom found that Miss M's privacy was unwarrantably infringed in the programme as broadcast. In Ofcom's view, Miss M had a legitimate expectation of privacy as she entered her school, and in the circumstances it was not justified for the programme makers to include unobscured footage of Miss M that left her readily identifiable.

#### **Introduction**

Between 30 April and 4 May 2007 BBC1 East Midlands aired editions of *East Midlands Today*, a regional news programme. A section of each edition broadcast between the above dates was dedicated to the topic of teenage pregnancy and the availability of the morning after pill to school children. The programme referred particularly to Lutterworth Grammar School in Leicestershire, which the programme said made the morning after pill widely available to its pupils through a support service. Mrs M's daughter, Miss M, was 16 years of age at the time of the broadcast, and was a pupil at the school. During the items, footage of Miss M was shown along with general footage of the outside of the school. The commentary over the clip

during which she was shown facing the camera referred to "*schoolgirls who think they've put themselves at risk of becoming pregnant*".

Mrs M complained that her daughter was treated unfairly and that her privacy was unwarrantably infringed in both the making and the broadcast of the programme.

## **The Complaint**

### **Mrs M's case, on behalf of her daughter**

In summary, Mrs M complained that her daughter was treated unfairly in the programme as broadcast, in that:

- a) The cameraman chose to film her daughter as she was wearing a skirt above the knee, which portrayed her in a negative light. Mrs M added that the clip of her daughter which was shown at the same time as the narrator stating "*girls may be at risk of getting pregnant*", resulted in judgements being made about her daughter's 'sexual status' which she found very distressing, and which were grossly unfair as her daughter had never accessed the morning after pill service at the school.

Mrs M complained that her daughter's privacy was unwarrantably infringed in the making of the programme in that:

- b) The programme makers failed to seek permission to film Mrs M's daughter, from Mrs M, her husband, or the school, despite Mrs M's daughter being 16 years of age at the time of the broadcast. Mrs M added that the programme makers failed to conduct any checks to verify her daughter's age or to confirm whether or not she was over 16 years of age.

Mrs M complained that her daughter's privacy was unwarrantably infringed in the broadcast of the programme, in that:

- c) Footage of her daughter's face was clearly shown as part of the items and no attempt was made to pixellate her face. This resulted in her daughter being identifiable to the general public, her friends and her family and caused great distress to all concerned.

### **The BBC's case**

In summary, the BBC responded to the complaint as follows:

- a) The BBC referred to a letter and telephone call of apology to Mrs M which outlined remedial steps it had taken following the incident, including: speaking to the cameraman, distributing the BBC guidelines to all staff and removing the original rushes from the BBC library. The BBC also stated that it considered a broadcast of an apology was not appropriate as it was likely to remind viewers of any implied link between the subject matter of the story and Miss M. With reference to the complaint that the cameraman chose to film Miss M because of her clothing, the BBC stated that it wished to reiterate its apology to Miss M and to explain the circumstances in which the footage of Miss M was obtained. The BBC stated that Miss M was not singled out for filming, rather she was one of a group of pupils who were the only ones to enter the school during the period of filming. The filming was not covert.

- b) With reference to the complaint that the programme makers failed to seek permission to film from Miss M, Mrs M, her husband or the school, the BBC stated that the cameraman had no idea of Miss M's age when he filmed the group. He had not asked how old they were or whether they were happy to be on television. The BBC further stated that the cameraman had admitted that he had "assumed" that, as they were not in school uniform, they were older teenagers. The BBC apologised for this and said that the cameraman had been personally spoken to.
- c) With reference to the complaint that the programme makers failed to pixellate Miss M's face and that she was identifiable in the broadcast, the BBC apologised and stated it accepted that Miss M should not have been identifiable. The BBC acknowledged that the footage should have been edited to disguise her identity in view of the risk of her being associated with the accompanying commentary "*schoolgirls who think they've put themselves at risk of becoming pregnant*".

## Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment in programmes, and from unwarranted infringement of privacy in the making and broadcast of programmes, included in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in a manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

This case was considered by Ofcom's Executive Fairness Group. In reaching a decision it considered a recording of the programme and the written submissions from both parties.

- a) Ofcom first considered Mrs M's complaint that her daughter was chosen to be included in the footage because of her clothing and that this resulted in her being portrayed in a negative light.

In considering this aspect of Mrs M's complaint, Ofcom took account of Rule 7.1 of Ofcom's Broadcasting Code ('the Code'), which states that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also took account of Practice 7.9 which states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom noted that Miss M was 16 years old at the time of filming and was filmed entering the gates of her school, which was clearly named in the programme.

Ofcom also noted the BBC's apology to Miss M and that the programme makers' statement that they did not single out Miss M in respect of the footage captured. However, in Ofcom's view it was apparent from the footage broadcast that Miss M turned towards the camera and in doing so was both

visually identifiable and the focus of the shot included in the broadcast. Furthermore, as Miss M was the only individual in the footage to turn and face the camera and as a result became the focus of the shot, she could not be described as appearing to be incidental to the shot or merely part of the background. In addition, because the commentary, "*schoolgirls who think they've put themselves at risk of becoming pregnant*", was made over the footage in which Miss M turned and faced the camera, particular attention was drawn to her and a connection between the content of the commentary, namely the issue of teenage pregnancy, and Miss M was suggested.

In the circumstances and taking into account the context in which Miss M appeared in the programme, Ofcom found that the inclusion of the footage of her, which rendered her the focus of the shot and identifiable to her local community, together with the commentary in question which associated her with the issue of teenage pregnancy, resulted in unfairness to Miss M.

- b) Ofcom next considered Mrs M's complaint that the programme makers failed to seek permission from Miss M, Mrs M, her husband or the school for the filming, despite Mrs M's daughter being 16 years of age, and that Miss M's privacy was infringed in the making of the programme.

Before considering these issues, Ofcom noted that as Mrs M's daughter was 16 years of age the appropriate person to give consent for filming, should it have been required, was Miss M herself.

In considering this complaint, Ofcom took into account Rule 8.1 of the Code, which requires that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted. Ofcom also took account of Practice 8.5 of the Code, which states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. When considering and adjudicating on a complaint of unwarranted infringement of privacy, Ofcom must therefore address itself to three distinct questions: First, does the complainant have a legitimate expectation of privacy in the circumstances of the case? Second, if so, has there been an infringement of privacy? Third, if there has been an infringement of privacy, was the infringement warranted?

Ofcom first considered whether Miss M had a legitimate expectation of privacy in relation to the recording of the footage in question. Ofcom examined the footage of Miss M and recognised that she was filmed in a public place, namely a public highway. However, Ofcom considered that her expectation of privacy was heightened by her age (under 18 years old) and the close proximity of the filming to her school. In this regard, Ofcom noted the recognition in the Code that schools are potentially sensitive places for recording material. Taking account of the above, Ofcom was satisfied that Miss M did have a legitimate expectation of privacy with regard to the recording of material of her walking into the school gates.

Ofcom next considered whether Miss M's privacy was infringed by the recording of the footage of her walking into the school grounds. Ofcom noted that the programme makers had filmed in an open manner on a public road

(albeit outside the school) and that the footage was not taken surreptitiously. Furthermore, Miss M was not obstructed by the camera crew or prevented from going about her business. In Ofcom's view, having taken the above factors into account, consent was not required to be sought from Miss M for the recording of the footage. Therefore, there was no infringement of her privacy in the making of the programme and in these circumstances, it was not necessary for Ofcom to continue to consider whether or not any infringement was warranted.

Accordingly, Ofcom has not upheld the complaint of unwarranted infringement of privacy in the making of the programme.

- c) Ofcom next considered Mrs M's complaint that the programme makers broadcast footage of her daughter where her face was clearly shown and that no attempt was made to pixelate her face.

Ofcom took account of Practice 8.1 of the Code as detailed above. Ofcom also had reference to Practice 8.3 which states that where people are caught up in events which are covered by the news they still have a right to privacy in both the making and the broadcast of a programme, unless it is warranted to infringe it. Ofcom also took into account Practice 8.6 of the Code, which provides that if the broadcast of a programme would infringe the privacy of a person or organisation consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom first considered whether Miss M had a legitimate expectation of privacy in respect of the broadcast of material of her walking towards and into the school gates. Taking into consideration the factors identified at decision head b) above, which heightened any expectation of privacy, namely Miss M's age, the nature of the footage and the location of the filming and the sensitivity of the subject matter under discussion, Ofcom found that Miss M had a legitimate expectation of privacy. Furthermore, in Ofcom's opinion, Miss M's privacy was infringed in the broadcast of the programme. In reaching this view, Ofcom considered that, although Miss M was not named, she was clearly identifiable to her local community from the footage broadcast, as a result of her turning to directly face the camera where her face was fully visible. Consequently, she could not be described as appearing to be incidental to the shot or merely part of the background. Ofcom also noted the nature of the commentary which referred to issues of a private nature, namely pregnancy and the use of contraception.

Taking the factors referred to above into account, Ofcom considered that Miss M's privacy was infringed in the broadcast of the programme. There were no grounds to justify including unobscured footage of her that left her visually identifiable in the item given the context discussed above. Accordingly, Mrs M's complaint on behalf of her daughter, of unwarranted infringement of privacy in the broadcast of the programme was upheld.

**In conclusion, Mrs M's complaint of unfair treatment was upheld and the broadcaster found to be in breach of Rule 7.1. The complaint of unwarranted infringement of privacy in the broadcast was also upheld and the broadcaster found to be in breach of Rule 8.1.**

## Not Upheld

### Complaint by Dr David Clarke

*The British UFO Mystery: Stranger Than Fiction, Five, 1 November 2006*

**Summary:** Ofcom has not upheld this complaint of unfair treatment by Dr Clarke.

This programme looked at UFO sightings in Britain and included an incident at RAF Cosford and RAF Shawbury between 30 and 31 March 1993. The programme focused on the investigation carried out by Mr Nick Pope, who worked in a Ministry of Defence department that examined reports of UFO sightings in the UK, and questioned whether or not the reported sightings pointed to extraterrestrial activity. Interview footage of Dr David Clarke was included in the programme in which he stated that an aircraft had been logged on radar over RAF Shawbury at the relevant time of the incident. Immediately following his comments, Mr Pope was shown stating that the aircraft tracked on radar was flying at an altitude of 20,000 ft. This was then followed by the programme's commentary which stated that an aircraft at this altitude would be near impossible to describe clearly.

Dr Clarke complained that he was treated unfairly in the programme as broadcast in that was not told the nature and purpose of the programme to which he was asked to contribute and that the interview footage of him was edited unfairly in that part of his response was omitted to give a misleading, unbalanced and distorted impression to viewers of what he had actually said.

In summary, Ofcom was satisfied that Dr Clarke was given sufficient information by the programme makers to have been in a position to give informed consent to his contribution being included in the programme and no unfairness resulted from the programme's focus on Mr Pope.

Ofcom also took the view that Dr Clarke's account of events broadcast in the programme was a fair reflection of a key argument made by him in his interview and its editing and inclusion in the programme as broadcast resulted in no unfairness to him.

### Introduction

On 1 November 2006, Five broadcast *The British UFO Mystery: Stranger Than Fiction*, a documentary programme which looked at UFO sightings in Britain. One of the investigations included in the programme concerned the circumstances surrounding an incident at RAF Cosford and RAF Shawbury ('the Cosford/Shawbury incident') between 30 and 31 March 1993. Between these dates, a large number of sightings were reported of a UFO entering British airspace and flying over highly-sensitive military establishments. The programme claimed that many of the reported sightings were made by witnesses such as police officers and military personnel. The programme focused on the investigation carried out by Mr Nick Pope, referred to in the programme as "*running a little known section of the MoD [the Ministry of Defence]*", that examined reports of UFO sightings in the UK, and questioned whether or not the reported sightings pointed to extraterrestrial activity.

Dr David Clarke contributed to the programme and interview footage of him was included in it. He appeared twice in the programme and offered what he called an alternative, rational explanation for the causes of the UFO sightings. Dr Clarke appeared twice in the programme. In his second appearance, Dr Clarke stated that

there had been an aircraft logged on radar over RAF Shawbury at the relevant time. Immediately following Dr Clarke's comments, Mr Pope was shown stating that the aircraft tracked on radar was flying at an altitude of 20,000 ft which was followed by the programme's commentary that stated that an aircraft at this altitude would be near impossible to describe clearly. Dr Clarke was interviewed for the programme on 3 August 2005 and programme was broadcast some 15 months later.

Dr Clarke complained to Ofcom that he was unfairly treated in the programme as broadcast.

## **The Complaint**

### **Dr Clarke's case**

In summary, Dr Clarke complained that he was treated unfairly in the programme as broadcast in that:

- a) He was not told the nature and purpose of the programme to which he was asked to contribute.

Dr Clarke said that he was told by the programme makers that the programme related to UFO incidents in Britain generally and his interview was conducted on this basis. He was not told that the programme would focus almost entirely upon Mr Pope's investigations into the Cosford/Shawbury incident. Dr Clarke said that he was also was not made aware that the programme would claim that the incident remained unexplained despite the 'solid factual information' provided to the programme makers by him.

- b) Dr Clarke said that the interview footage of him was edited unfairly in that part of his response was omitted to give a misleading, unbalanced and distorted impression to viewers of what he had actually said during the interview.

Dr Clarke said that he was asked by the programme makers during his interview to give his position on the UFO sighting of the Meteorological Officer ('the Met Officer') at RAF Shawbury in the early hours of 31 March 1993. Dr Clarke said that he told the interviewer that the Met Officer had possibly seen either an aircraft that had been tracked on radar 20,000 ft above the base at the relevant time, or a police helicopter that was also in the area at that time following a stolen car. However, Dr Clarke said that his explanation about the aircraft at 20,000 ft was immediately dismissed by Mr Pope and the programme's commentary which stated that an aircraft flying at that altitude over the base would have been difficult if not impossible to describe clearly from the ground. Dr Clarke said that he was not given an opportunity to respond to this statement which he felt was unfair. He said given the fact that he had provided a full and considered response during his interview of the further possibility of a police helicopter being in the area and the fact that even credible witnesses frequently made mistakes when estimating height and distance of objects seen in the night sky. Dr Clarke complained that by omitting these qualifying facts, the programme gave a misleading impression to viewers of what he had said.

### **Five's case**

In summary, Five responded to the complaint as follows:

- a) On 27 July 2005, Ms Kay Hill, an executive producer for the programme, emailed Dr Clarke after reading his article in the *Fortean Times* about the claims made by Mr Pope about the wave of UFO sightings in the UK in 1993. Five said that Ms Hill was quite clear with Dr Clarke as to the nature and purpose of the programme and what it was about. In her email, Ms Hill said that the programme was a “*documentary which explores UFO sightings over the UK*” and that “*the 1993 Cosford and Shawbury incident is one that [would be covered]*”. Five said that her email went on to give Dr Clarke a clear explanation of why he was being asked to contribute, namely that after reading his article she wanted to invite him to be interviewed for the programme.

From this email, Five said that it was clear to Dr Clarke that: the programme was about UFO sightings in the UK; the 1993 Cosford/Shawbury incident would be covered; Ms Hill had read his article in the *Fortean Times*; the article concentrated solely on the incident; and, the reason he was being invited to appear on the programme was to comment on the incident.

Five said that given that the focus of the *Fortean Times* article was Mr Pope’s investigation into the Cosford/Shawbury incident and that the article was the reason that the programme makers asked Dr Clarke to contribute to the programme, it was clear [to Dr Clarke] that Mr Pope’s investigation would play a large part in the content of the programme.

Five said that Dr Clarke had signed a consent form on the day of his interview. The provisional title of the programme, “*MOD X-Files*”, was on the form which was a further indication to Dr Clarke that the focus of the programme would be the case files of the MoD and Mr Pope’s investigation into reported UFO sightings.

Five said that the interview with Dr Clarke was almost exclusively focused on the Cosford/Shawbury incident. The interviewer’s first question to Dr Clarke was:

*“There are those who say that the incident in March 31, 1993, is possibly Britain’s most extraordinary UFO incident in the history of sightings in this country, what’s your reaction to that?”*

Subsequent questions concentrated on the incident and followed the responses given by Dr Clarke to them. Apart from a couple of general questions about the role of the MoD in investigating reported UFO sightings, the interviewer was only interested in the Cosford/Shawbury incident sightings.

Five said that Dr Clarke mentioned Mr Pope’s investigation in answering the first question and talked about Mr Pope’s book which he acknowledged was responsible for awakening interest in the Cosford/Shawbury sightings. Five said that, during his interview, Dr Clarke gave a detailed account of the Cosford/Shawbury incident and referred to Mr Pope and the MoD file when discussing the reported sightings of the Met Officer at RAF Shawbury. Five said that when questioned about whether it was possible to verify whether the Met Officer might have seen a helicopter, Dr Clarke talked again about the MoD file and information which would have been available to Mr Pope.

Five said that Dr Clarke cooperated happily with the interview and did not raise any objection to the nature, tone, or subject matter of the questions asked of him. Nor did he raise any issue over why the interview focused solely on the Cosford/Shawbury incident.

In response to Dr Clarke's claim that he was not made aware of any significant changes to the programme as it developed, and that, if he had been, it might have affected his original consent to participate, Five said that there were, in fact, no significant changes made to the programme between its commissioning and broadcast. Five said that the programme's nature and purpose did not change and there was never intention to make any programme other than the one broadcast.

- b) Five said that the programme discussed Air Traffic Control radar records showed that an aircraft was flying over RAF Shawbury at 20,000ft. The programme stated that Dr Clarke thought that "*this provides the answer*" to these sightings and quoted his comments on this.

The programme went on to discuss what Five referred to as Mr Pope's view that the aircraft tracked on radar could not explain the reports of two RAF policemen at RAF Cosford, or the Met Officer at RAF Shawbury because they estimated the altitude of the aircraft they saw at around 1,000 ft, not 20,000 ft. In his interview, Five said that Dr Clarke provided two possible explanations for the report from the Met Officer. The first was the one quoted in the programme, namely the aircraft at 20,000 ft tracked on radar above RAF Shawbury. The second was that the Met Officer may have seen a police helicopter using a searchlight. When questioned about the discrepancy of the altitude of the aircraft, Dr Clarke explained that even "expert" witnesses could be mistaken, particularly in the circumstances of these sightings.

Five said that Dr Clarke's helicopter explanation was not included in the programme because it was felt that his theory might have appeared to viewers that he was contradicting himself. Five said that on the one hand, Dr Clarke thought that the sightings could have been of the aircraft tracked on radar, but on the other hand, he said a police helicopter using a searchlight could provide the answer. In addition, Five said that Dr Clarke said in interview that there was no way to prove the possible presence of a police helicopter because of the short time for which records were kept. It was therefore only a theory with no evidence to support it. Furthermore, the programme was telling the story of Mr Pope's case file, which made no mention of a police helicopter.

Five said that the portion of Dr Clarke's interview that was included in the programme was presented fairly and the absence of his further explanation would not have resulted in unfairness to him as it would not have materially affected viewers' opinion of him in an unfair way.

### **Dr Clarke's comments in response**

In summary, and in response to Five's statement made in response to the complaint Dr Clarke said that:

- a) Dr Clarke said that Ms Hill's email of 27 July 2005 referred to "*UFO sightings*" (plural) and included the neutral statement that the Cosford/Shawbury incident would be "one that we'll be covering". He said that following the

email, he had spoken to Ms Hill on the same day and that she had given him a clear and unambiguous impression that the programme makers would be covering several of the best-known UFO incidents, not just the Cosford/Shawbury incident. Dr Clarke said that he had emailed three colleagues on the same day in order to provide them with a summary of the discussion he had had with Ms Hill. In this email, Dr Clarke said that the programme makers would be covering “*mostly British cases*” and that Ms Hill had “*promised to send me a list of the other cases they are including, but not surprisingly they are having to cover Rendlesham [another UFO sighting incident]*”. Dr Clarke said that he had agreed to participate in the programme on the information he had been given and that within the context already set out above, it was no surprise to him that the interview specifically focused on the Cosford/Shawbury incident.

Dr Clarke said that his views on the Cosford/Shawbury incident were radically different from those held by Mr Pope. Dr Clarke said that from the moment he was approached by Ms Hill, the programme makers had a duty to keep him informed as to any changes of emphasis in the programme content; and, to make it clear to him that Mr Pope’s story would be the centrepiece of the programme. Dr Clarke said that the programme makers failed in all these duties.

Dr Clarke said that Five’s claim that since he was aware that Mr Pope worked for the MoD at the time of the sightings and so would therefore have known that any questions about the MoD would, by implication, have been about Mr Pope did not stand up to scrutiny. Although Mr Pope would naturally appear in a section of a programme that covered the Cosford/Shawbury incident, Dr Clarke said that Mr Pope was not the only official working in the MoD section that scrutinised reports of UFO sightings.

- b) Dr Clarke said that he was not given sufficient air-time for his views to be fairly presented. Mr Pope was given the opportunity to comment on Dr Clarke’s contribution regarding the relevance, or otherwise, of the aircraft reported to be flying 20,000ft over RAF Shawbury at the time of the Met Officer’s sighting. Dr Clarke said that he had covered the issues relating to this matter in his interview but the programme makers had chosen not to include it.

Dr Clarke said that throughout the programme the commentary emphasised the reliability of eye-witness descriptions of the altitude, range, speed and movements of lights they have seen in the night sky. This he argued was presented to viewers as being conclusive and unopposed. Yet there was no suggestion made that this premise was highly contentious or that other, opposing expert views existed relating to the reliability of such evidence. Dr Clarke said that this omission was damning because he had, in fact, voiced an opposing viewpoint very strongly and clearly in his contribution. Dr Clarke said that the omission portrayed him as an expert who was prepared to dismiss witness statements as unreliable without giving full attention to their specific content.

Dr Clarke said that he was not given the opportunity to respond to Mr Pope’s comments about the aircraft tracked by radar at 20,000 ft, despite the fact that Five had suitable material from his interview which they decided not to use.

## Five's Statement in Response

In summary, Five responded to Dr Clarke's comments as follows:

- a) Five said that Dr Clarke accepted that he was aware that he was only being asked to give an interview about the Cosford/Shawbury incident for inclusion in the programme and that he had agreed to this based on his understanding of the nature and purpose of the programme, namely that it would explore 'UFO sightings over the UK and the 1993 Cosford and Shawbury incident'. Five said that it noted that Dr Clarke also believed that other UFO incidents would be covered in the programme. Five said that Dr Clarke, as a journalist and "expert on UFOs" who, he said, had been asked to contribute to, and act as consultant for, numerous TV and radio broadcasts on the subject of UFO sightings, he would therefore have been aware that programmes were often edited and not everything which was originally envisaged to be included in the programme would make it to the broadcast version. This programme, however, did not change to a degree which the programme makers thought might reasonably affect Dr Clarke's original consent to participate and which might cause material unfairness. Five said that it was common to research more material than would be included in the programme and to decide what to focus on as the project develops.

Five said that Ms Mill's email of 27 July 2005 made it clear that the Cosford/Shawbury incident sightings would be covered in the programme. Her email was a fair and accurate description of the programme that was broadcast and was clear that this was the incident about which Dr Clarke would be interviewed. Five said that the nature and purpose of the programme as broadcast, and what the programme was about, did not differ materially from the description of the programme given to Dr Clarke by Ms Mills.

- b) Five said that it had already explained in its first statement why it did not consider that the omission of Dr Clarke's explanation that the Met Officer may have seen a police helicopter would have affected viewers' opinion of Dr Clarke in an unfair way.

Five said that Dr Clarke suggested that that the omission might have portrayed him as an expert who was prepared to dismiss witness statements as unreliable without giving full attention to their specific content. Five said that it did not believe that any reasonable viewer would have formed this view as nothing in the programme could have suggested this. Five said that the omission of Dr Clarke's alternative explanation would not have led viewers to believe he did not have one.

Five said that a programme did not result in unfairness simply because all of the views expressed by a contributor, or each and every single fact surrounding an issue, were not presented in full.

## Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment in programmes included in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

This complaint was considered by Ofcom's Executive Fairness Group. In reaching a decision it considered a recording and transcript of the programme and the submissions from both parties.

- a) Dr Clarke complained that he was treated unfairly in the programme as broadcast in that he was not told the nature and purpose of the programme to which he was to contribute.

In considering this element of Dr Clarke complaint, Ofcom took account of Rule 7.1 of Ofcom's Broadcasting Code ("the Code") which states that 'broadcasters must avoid unjust or unfair treatment to individuals and organisations in programmes'. It also took into account Practice 7.3 which states that where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor) they should normally, at an appropriate stage: be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute and when (if known) and where it is likely to be first broadcast; be told what kind of contribution they are expected to make, for example live, pre-recorded, interview, discussion, edited, unedited, etc; be informed about the areas of questioning and, wherever possible, the nature of other likely contributions; be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness; be told the nature of their contractual rights and obligations and those of the programme maker and broadcaster in relation to their contribution; and, be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it. Taking these measures is likely to result in the consent that is given being 'informed consent' (referred to in this section and the rest of the Code as 'consent').

Ofcom first considered what Dr Clarke was told by the programme makers about the nature of the programme and on what his contribution was likely to be focused.

Ofcom noted the email sent to Dr Clarke by Ms Kay Hill, the programme's executive producer, on 27 July 2005 and that Ms Hill had explained to him that the programme makers were making a documentary exploring UFO sightings over the UK and that it would include the 1993 Cosford/Shawbury incident. Ms Hill's email went on to inform Dr Clarke that she had read his article in the *Fortean Times*, in which he re-examined Mr Pope's investigation into the incident and concluded that it was a case of misinterpretation by Mr Pope and other witnesses. Ms Hill invited him to agree to be interviewed for the programme. Ofcom also noted Dr Clarke's email to three of his colleagues sent on the same day (27 July 2005) in which he stated that the programme would be covering a number of UFO incidents, not just the Cosford/Shawbury incident.

Ofcom also noted the programme makers' questions during the interview with Dr Clarke which in Ofcom's view primarily focused on the Cosford/Shawbury incident. The opening question referred specifically to "*the incident in March 31, 1993*". Ofcom noted that the discussion during the interview: referred on numerous occasions to the Cosford/Shawbury incident; the possible rational explanations for the incident; the MoD investigations into UFO sightings; and, at one point, to Mr Pope and his investigations specifically. It also noted that Dr Clarke had signed a consent form on which the programme title was stated as being "MOD X-Files". Ofcom noted Dr Clarke's assertion that it was no surprise to him that the interview focused on Cosford/Shawbury incident, but that it was not made clear to him in his contact with Ms Hill that the programme would centre on Mr Pope rather than him appearing as one of a number 'UFOlogists' and witnesses discussing various sightings.

Ofcom appreciated that Ms Hill's email to Dr Clarke dated 27 July 2005 did not contain detail of who would else would be contributing to the programme, namely Mr Pope. However, Ofcom considered that it would have been reasonably evident to him that the broad terms of the programme were to include discussion about UFO sightings in the UK and that some of that discussion would centre on the Cosford/Shawbury incident. Also, reference to his article in the *Fortean Times* would have also reasonably indicated to Dr Clarke that the programme makers were interested in this incident in which Mr Pope played a significant part. Ofcom considered that it was a matter of discretion for the programme makers as to the role of other contributors as long as no unfairness resulted. In this case in Ofcom's view, Dr Clarke was given sufficient information by the programme makers to have been in a position to give informed consent to his contribution being included in the programme and no unfairness resulted from the programme's focus on Mr Pope.

Ofcom could see no evidence in the material considered by it to suggest that the nature of the programme changed significantly from the time of Dr Clarke's interview and its broadcast. From the material referred to above, Ofcom is satisfied that the nature and purpose of the programme was to examine the MoD investigations into some of the UK's best-known UFO sightings and that it would focus on some of them. One incident the programme makers chose to focus on was the Cosford/Shawbury incident in 1993 and Mr Pope's role in it and, as discussed above, within the context of the programme as outlined to Dr Clarke, no unfairness resulted from this.

In these circumstances, Ofcom found no unfairness to Dr Clarke as a result of what he had been told by the programme makers what the nature and purpose of the programme to which he was asked to contribute.

- b) Ofcom then went on to consider Dr Clarke's complaint that he was treated unfairly in the programme as broadcast in that the footage of his interview was unfairly edited and part of his response unfairly omitted.

In considering this element of Dr Clarke complaint, Ofcom took account of Rule 7.1 of Ofcom's Broadcasting Code ('the Code') which states that broadcasters must avoid unjust or unfair treatment to individuals and organisations in programmes. It also took into account Practice 7.6 of the Code which states that when a programme is edited, contributions should be represented fairly and Practice 7.9 which states that before broadcasting a factual programme, including programmes examining past events,

broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom first considered whether or not Dr Clarke's contribution was edited unfairly in that his explanation about the presence of an aircraft being recorded flying over RAF Shawbury at 20,000 ft at the relevant time was immediately followed by Mr Pope's contribution and the programme's commentary.

Ofcom noted the full sequence from the programme:

Commentary: *"London's Central Air Traffic control centre at West Drayton had Radar records that clearly identified an aircraft over RAF Shawbury. David Clarke, UFO investigator, thinks this provides the answer."*

David Clarke: *"If you actually look at the MOD file the RAF did a radar rerun of the radar picture of the particular evening where the UFOs had been sighted."*

*The result that came back from West Drayton actually identifies an aircraft overhead at RAF Shawbury at exactly the same time, its there in black and white in the file...2.40am, or 0140 Zulu time Shawbury aircraft overhead Squawk. So presumably this UFO was actually talking to air traffic control."*

Nick Pope: *This document here sets out a picture of the aerial activity that evening I had gone to the ATC specialists and asked for a breakdown what had been flying that night.*

*Here it is item by item so we were able to have a look at this and see whether anything here might explain UFO sightings. This line entry here is particularly interesting because it does talk about an aircraft overhead Shawbury, however the crucial piece of information is in the last three digits, that's the flight level and what this shows is that the aircraft was at a height of 20,000ft."*

Commentary: *"Twenty thousand feet was not what the two RAF policemen at Cosford – or the MET officer at RAF Shawbury described seeing.*

*They put the UFO at an altitude of around one thousand feet.*

*That's a significant difference. An aircraft at 20,000 feet would be difficult if not impossible to describe clearly.*

*But at 1,000 feet many people, let alone servicemen with this level of aviation knowledge would be able to identify a known craft.*

*These witnesses would have eliminated the obvious before putting their reputations on the line and reporting a UFO."*

Ofcom recognised that programme makers and broadcasters must take reasonable care to satisfy themselves that material facts including responses and statements included in programmes are not presented in a way that could lead to unfairness to others. Ofcom noted that Dr Clarke provided an explanation about an aircraft flying over RAF Shawbury; Mr Pope's comment that the aircraft was flying at an altitude of 20,000 ft; and, the programme's commentary which suggested that at 20,000 ft, the aircraft would have been difficult if not impossible to describe clearly and that it did not match the accounts of witnesses who put the UFO flying at an altitude of about 1,000 ft. Despite presenting a contrary conclusion about the relevancy of the high altitude aircraft, Ofcom was satisfied that the neither Mr Pope nor the programme's commentary made any allegation or substantive comment about Dr Clarke that would have necessitated the programme makers having to seek a further response from Dr Clarke.

Ofcom then considered whether or not the omission of Dr Clarke's further explanation that a police helicopter had been flying at about 1,000 feet in the RAF Shawbury area at the relevant time and his comments about the reliability of the testimony of "expert" witnesses in such cases resulted in unfairness to him.

Ofcom noted from Five's statement that the programme makers had chosen not to include Dr Clarke's alternative, or second, explanation, that the UFO in question was in fact a police helicopter, because to have included both of Dr Clarke's explanations could have led viewers to believe that he was contradicting himself. Ofcom noted Five's assertion that Dr Clarke's explanation was only a theory as there was no corroborative evidence to support it and that the programme was telling the story of Mr Pope's case file which made no mention of the police helicopter theory.

Ofcom considered that it was a matter for the programme makers as to which extracts from Dr Clarke's interview to use in the programme as long as no unfair treatment resulted.

In Ofcom's view, Dr Clarke's account of events broadcast in the programme was a fair reflection of a key argument made by him in his interview and its editing and inclusion in the programme as broadcast resulted in no unfairness to him. Ofcom considered that although Dr Clarke's explanation about the possible existence of a police helicopter in the vicinity of RAF Shawbury at the relevant time may have been pertinent to a wider examination of the Cosford/Shawbury incident there was no obligation on the programme makers to include all competing theories.

Taking all the above factors into account, Ofcom found that the programme did not result in unfairness to Dr Clarke in this respect.

**Accordingly, Ofcom has not upheld Dr Clarke's complaint of unfair treatment in the programme as broadcast.**

## Not Upheld

### **Complaint by Tesco Plc brought on its behalf by Carter-Ruck solicitors**

*Channel 4 News, Channel 4, 10 October 2006*

**Summary:** Ofcom has not upheld this complaint of unfair treatment.

The programme featured a report on child labour which, it alleged, was being used by suppliers in the production of clothes for Tesco stores. The item featured footage secretly filmed in factories in Bangladesh and interviews with two child workers, an adult worker, and with a representative of the International Textile, Garment and Leather Workers' Federation.

Tesco complained that footage, and commentary, was featured in the programme which was unfair to Tesco. In particular it complained about footage and commentary concerning what the programme referred to as a "little boy who looks no more than eight." Tesco stated that boy concerned was in fact aged 12 and only visiting the factory not working there. Tesco also complained that certain alleged 'child' workers were given special prominence in the programme when they were in fact aged 18 or over. Tesco further complained that Tesco was not given a timely and appropriate opportunity to respond to allegations made in the programme.

The Committee considered that the claims made about Tesco in the programme as a whole were properly supported (by broadcast interviews with two child workers on a Tesco line, two children working in factories which supplied Tesco and an adult whistleblower who had formerly worked in one of these factories), and were placed in a fair context (which included a number of references to Tesco's position including sections of its statement in response to the allegations contained in the report). The Committee noted the wider context of the programme: it questioned Tesco's ability to ensure its ethical standards are met throughout the supply chain. The Committee considered that the report did not allege that Tesco was deliberately or knowingly using child labour to produce its clothing. Rather, it showed that companies supplying Tesco were employing workers who were below the legal age limit in Bangladesh (i.e. aged under 14) and that some of these workers were producing clothes for Tesco.

The Committee therefore found that the programme was not unfair in its treatment of Tesco. The Committee also found that Tesco was given both an appropriate and timely opportunity to respond to the allegations made in the programme.

#### **Introduction**

This edition of *Channel 4 News* featured a special report on child labour which, it alleged, was being used by some suppliers in the production of Tesco's own label clothes. The item featured footage secretly filmed in four factories in Bangladesh, which the report alleged supported this claim. Two of the factories were managed by a company called Harvest Rich and two by a company called the Evinco Group. The report also included interviews with child workers and with a representative of the International Textile, Garment and Leather Workers' Federation. A statement from Tesco Plc was included in the item.

The complaint of unfair treatment in the programme by Tesco Plc (“Tesco”) was brought on its behalf by Carter-Ruck Solicitors (“Carter-Ruck”).

Ofcom’s Fairness Committee (its most senior decision making body with regard to fairness and privacy complaints) originally considered and provisionally adjudicated on this complaint finding that Tesco had not been treated unfairly in the programme as broadcast.

Tesco requested a review of the provisional finding on the ground that it was flawed.

The Fairness Committee met to consider afresh Tesco’s complaint of unfair treatment.

## **The Complaint**

### **Tesco’s case**

In summary, Tesco complained that it was treated unfairly in that:

- a) The programme featured footage and commentary which was unfair to Tesco including the following:
  - i) The programme repeatedly and unfairly featured footage of what the programme referred to as a “little boy...who looks no more than eight” when the boy in question was in fact 12, had no connection to the factory and was delivering lunch to his cousin. On one occasion his image was unfairly accompanied by commentary which stated “the profits are higher than ever and so are the store’s posted ethical standards but tonight we expose the child labour working for Tesco’s suppliers”. The image was further unfairly used to support the commentary reference to “child labour”.
  - ii) The item featured an interview with Mr Kearney of the International Textile, Garment and Leather Workers’ Federation stating that “children as young as eight” were working. Tesco complained that it was evident that Mr Kearney was misled by the programme makers and this misrepresentation was not corrected by the programme makers.
  - iii) The programme gave special prominence to what it unfairly described as 12 “children” in the programme, when in fact Tesco identified 11 of these individuals all of whom are actually aged 18 or over according to their employment records.
  - iv) The programme identified a further 24 ‘workers’ as children, whom Tesco identified as aged 18-28 by their work records, with further medical confirmation of this in the case of 17 of them.
  - v) The programme unfairly alleged that Tesco demonstrated a ‘don’t care attitude’ since the programme stated that Tesco visited only two out of the four factories referred to in the programme. In fact Tesco informed the programme makers that it had visited all four factories.
- b) Tesco was not given a timely or appropriate opportunity to respond to allegations made in the programme:

- i) Tesco was refused an opportunity to participate in either a live or recorded interview and was told it could only provide a brief statement in response to the allegations made.
- ii) Tesco was given only two weeks notice in which to launch an investigation and the programme makers refused to disclose their evidence to Tesco.
- iii) The section broadcast of Tesco's statement, in response to the allegations made in the programme, was unfairly edited. The broadcast statement was also made to appear demonstrably false since it was accompanied by the programme's allegation that Tesco made unannounced visits to only two out of the four factories referred to.
- iv) The programme unfairly suggested that Tesco might be "*cutting and running*" from factories with problems but did not put this allegation to Tesco for a response.

### **Channel 4's case**

In summary the broadcaster responded to the complaint by Tesco as follows:

- a) Channel 4 stated that the programme makers visited, and secretly filmed in, four factories: two belonging to the Evince Group and two belonging to Harvest Rich, both Tesco suppliers. Furthermore, the report was fair and balanced, and painstakingly written and produced to ensure that it accurately and fairly represented the evidence that had been uncovered. Channel 4 argued that the report did not overstate the evidential value of the covertly recorded material. It presented it fairly so viewers could judge for themselves. The report was based not only on covertly recorded footage, but also on corroborated, on-camera interviews with child workers, their parents, adult workers and independent witnesses. Channel 4 stated that the majority of the evidence on which the report was based was therefore not even referred to in Tesco's complaint.
- i) Channel 4 responded that Tesco's explanation that the "*little boy... who looks no more than eight*" had no connection to the factory and was just delivering lunch, seemed highly unlikely. The broadcaster said it was directly at odds with what was witnessed by the two experienced programme makers when Channel 4 was filming, namely that the boy was sewing creases into denim trousers as part of the production process. Channel 4 stated that the footage showed him with a needle in his hand and his work was discussed with the general manager of Harvest Rich. Furthermore Harvest Rich management told the producers that the company provided the workers with a free lunch so there would be no reason for the boy to be bringing lunch in for a cousin.

Channel Four said there was evidence that since the report the issue of child labour was being covered up in Bangladesh. As a direct result of the report, some child workers, their parents and independent witnesses were being intimidated and instructed to lie about the children's true ages; and child workers had been sacked. Channel 4 said this was confirmed to Channel 4 by the General Secretary and Executive Director of the Bangladesh Centre for Workers' Solidarity.

- ii) Channel 4 responded that Mr Kearney, of the International Textile, Garment and Leather Workers' Federation, was not misled in relation to the footage discussed above at head a) i). Channel 4 said that following the broadcast Mr Kearney had written to confirm that he was extremely experienced in this area, that the "*delivering lunch story is as old as time*", and that he was satisfied that the boy featured appeared to be no more than eight and to be working.
- iii) Regarding the workers, in Channel 4's view there were at least 15 workers, not 12 as Tesco stated, whose ages were questionable. Channel 4 argued that Tesco's "evidence" in relation to the workers raised more questions than answers. Channel 4 stated that of the 12 workers referred to by Tesco only six had had their ages independently verified, for the others Tesco relied only on the employers' records which were clearly unconvincing given the nature of the allegations.

Channel 4 responded that it was suspicious that all the employment records contained dates of birth, when according to Unesco only about 7.5% of births are registered in Bangladesh and few families formally record dates of birth. Furthermore Channel 4 stated that Hanesbrands Inc, another Western retailer, had terminated its contract with Harvest Rich. According to Channel 4 this followed investigations after the programme which revealed that Harvest Rich had been falsifying records to conceal excessive working hours and delayed overtime pay.

In relation to individual employment records provided by Tesco, Channel 4 stated that: the photographs were unclear; the records relied on the subject's recollection of their date of birth; the physical attributes recorded were consistent with the worker being under the age of 15; and, the records provided inconsistent references for example to height, weight and identifying features. In correspondence exchanged before the broadcast, Tesco admitted that one of the factories featured, to which work had been subcontracted, did not have a fully implemented age checking procedure and yet, Channel 4 observed, all the employer records have ages noted.

- iv) Regarding the other workers shown, Channel 4 responded that it would have been obvious to viewers that Channel 4 did not seek to assert that all the workers shown looked under age, some were clearly adults. Only the young-looking workers were highlighted for viewers and Channel 4 argued that Tesco's evidence in relation to the other workers was irrelevant.

Channel 4 said the item was careful not to overstate the undercover footage and used language like "*looked younger than... 15*" and "difficult to be sure".

- v) Regarding the reporting of Tesco's factory visits Channel 4 responded that Tesco made visits to some factories but failed to make unannounced visits to half the factories under investigation. Channel 4 stated this was in spite of the programme makers contacting Tesco before they contacted the suppliers so that Tesco could make surprise visits. Channel 4 argued that the fact that Tesco claimed not to have uncovered evidence of child labour at these factories was not therefore surprising.

Channel 4 said that in a letter which was sent to it by Carter-Ruck on 5 October 2006 Tesco stated that unannounced visits were made to two of the four factories and this was reported. Channel 4 argued that two further unannounced factory visits were irrelevant as no allegations were made in relation to one of the factories visited, and the other visit was after the broadcast of the programme. Channel 4 therefore argued that the report was accurate in stating that Tesco made unannounced visits to two of the factories under investigation and said this fact was based directly on what Tesco had told *Channel 4 News*.

- b) Channel 4 responded that the programme makers went to great lengths to ensure Tesco was given an adequate and timely opportunity to respond to allegations made in the programme:
- i) Regarding the nature of Tesco's on-air response, Channel 4 stated that Tesco was given the opportunity to put forward a spokesman to be interviewed within the report but chose not to. Channel 4 said this offer was made in *Channel 4 News's* first letter to Tesco on 27 September 2006, however on 6 October 2006 Tesco gave a clear indication that no on camera interview would be forthcoming. Channel 4 therefore agreed to extend the deadline for Tesco's reply and urged it to provide a written response. On 8 October 2006 Tesco requested a live interview on condition that it first viewed the film in advance. This was unacceptable to Channel 4 and on 9 October 2006 Tesco's statement was received.

Channel 4 argued that Tesco was asked to provide a written response and it was Tesco that chose to supply a brief response. The broadcaster said *Channel 4 News* tried to reflect Tesco's position more widely in the report: in the studio introduction and at different stages of the report.

- ii) Regarding the time and material given to Tesco for its response, Channel 4 responded that Tesco was given a fair opportunity in which to make its own investigations and respond accordingly. The broadcaster argued that two weeks was ample opportunity for Tesco, a large multinational company with extensive resources, to look into the allegations and respond. It said *Channel 4 News* was also cooperative in that it did not alert the suppliers before Tesco had a chance to visit the factories.

Channel 4 said the programme makers provided Tesco with more than enough information in order for it to respond and this was demonstrated by the background correspondence provided. It argued that there was no regulatory or legal requirement for Channel 4 to provide Tesco with the actual evidence or reveal the identity of its sources. Channel 4 said it complied with its obligations under the Ofcom Broadcasting Code to outline the allegations adequately in order to provide Tesco with an opportunity to respond to them. Channel 4 said it provided a comprehensive and detailed account of the nature, subject matter and content of the intended broadcast.

- iii) Regarding the editing of Tesco's statement, Channel 4 responded that Tesco's response was fairly edited in the broadcast report. This attempted to reflect Tesco's known position throughout the report where it was relevant in spite of Tesco's apparent reluctance to provide a formal response on the record. Channel 4 said it was Tesco's choice that its response was brief.

Channel 4's response in relation to the reporting of Tesco's factory visits is dealt with above at head a) v).

- iv) Regarding the complaint that Tesco was associated with "cutting and running" from factories, Channel 4 responded that the report did not allege that Tesco were likely or even might "cut and run", hence the allegation did not need to be put to Tesco. Channel 4 said that the reference was made by Mr Kearney who stated "They can't pull out, pulling out is known as cutting and running". Channel 4 argued that it was clear to viewers that he was referring to what should not happen, and not what might or was likely to happen.

### **Tesco's comments in response to Channel 4's statement**

In summary, Tesco commented on Channel 4's response as follows:

- a) Tesco commented that although Channel 4 argued that the report presented the material fairly so viewers could judge it for themselves, throughout the report it was clear that the commentary was stating as fact that children were working on Tesco lines. The commentary was combined with the footage and sinister background music to suggest evidence of Tesco's malevolence.
  - i) The age of the boy referred to as "*no more than eight*" has been verified (as 12 years old) by the Marie Stopes clinic and yet the programme makers, with no medical qualifications maintain he is about eight. Harvest Rich has confirmed that they do not, as stated in Channel 4's response, provide lunch for their workers. Channel 4 stated in its response that it has undercover footage of the boy sewing creases into denim jeans, however the factory has never produced any denim products for Tesco.
  - ii) No further comment was made regarding the complaint that Mr Kearney was misled.
  - iii) Regarding the most prominently featured 'child' workers, Tesco noted that Channel 4 said that the workers lied about their age, the factories are complicit in this deception and the factory doctors are either complicit in the deception or negligent in their duties. However Tesco argued that on not one occasion did the independent Marie Stopes clinic doctors disagree with the factory doctors.
  - iv) For Tesco's comments regarding the further 'child' workers see comment at head a) above.
  - v) No further comment was made regarding the complaint concerning a 'don't care attitude'.
- b) Regarding an appropriate and timely opportunity to respond Tesco commented as follows:
  - i) Regarding the nature of the opportunity to participate (live, recorded or written) no further comment was made.
  - ii) Regarding the disclosure of evidence by Channel 4, Tesco responded that the allegations first put to it lacked specificity and shifted as it

provided Channel 4 with responses and shared with it the results of its investigations. Furthermore, Tesco said that it was not given a fair opportunity to respond to those allegations that were broadcast, nor did Channel 4 provide it with the full extent of its investigations in order for Tesco to conduct its own investigation more quickly.

- iii) No further comment was made regarding the editing of Tesco's statement.
- iv) Regarding the reference to cutting and running, Tesco argued that it was clearly referring to Tesco. The reference immediately followed commentary which stated that Tesco had issued one supplier with a warning and put one under review and implied that Tesco was then about to cut and run. Furthermore this allegation should have been put to Tesco.

### **Channel 4's second statement in response to the complaint**

In summary, the broadcaster responded as follows:

- a) The broadcaster responded that Tesco had misconstrued Channel 4's response. Channel 4 stated that its point about viewers making up their own minds was only in relation to the way the secretly filmed footage was presented. However this was only one plank of its evidence. Channel 4 argued that because it could not be sure of the ages of the workers shown it was very careful and fair about the claims made about the covertly recorded footage. However the commentary was also based on corroborated interviews with child workers who admitted working on Tesco lines. Furthermore Channel 4 knew for a fact the ages of a number of the child workers interviewed. The music was chosen to reflect the serious nature of the report and there was nothing unfair about it. There was certainly no suggestion of Tesco's complicity or 'malevolence':
  - i) Regarding the boy 'who looks no more than eight' Channel 4 repeated its response that there were serious doubts about the evidence provided by Tesco in relation to this child and many other child workers. Regarding the provision of lunches, Channel stated that this reference in its response was based on what the reporter was told by the factory manager. Regarding the young boy sewing creases into denim trousers, Channel 4 stated that this was witnessed by its reporters. Furthermore, and regardless of whether the child was working on a Tesco line when he was filmed, Channel 4 argued that this was a child working illegally in a factory supplying Tesco which was totally unacceptable, and he could have moved to a Tesco line after the filming since workers often move between lines.
  - ii) No further response was made regarding the complaint that Mr Kearney was misled.
  - iii) Regarding the age of the workers Channel 4 stated that it made no claim about the probity of individual doctors who Tesco claimed were working on behalf of Marie Stopes. However Channel 4 argued that neither it nor Ofcom could verify the documentation which Tesco claimed related to the children covertly recorded and which, as discussed in Channel 4's first response, was full of discrepancies.

- iv) For Channel 4's response regarding the further 'child workers' see head a).
  - v) No further response was made regarding the complaint concerning a 'don't care attitude'.
- b) Regarding an appropriate and timely opportunity to respond Channel 4 responded as follows:
- i) Regarding the nature of the opportunity to participate (live, recorded or written) no further response was made.
  - ii) Regarding the disclosure of evidence to Tesco Channel 4 responded that a comprehensive and detailed account of Channel 4's evidence was given to Tesco in correspondence in advance of the broadcast. Channel 4 stated that there was no obligation to hand over the evidence itself prior to broadcast and Channel 4 fully complied with its regulatory obligations and indeed went significantly further than was required by law. Channel 4 said it did not deny that elements of the report changed during the exchange of correspondence with Tesco and argued that correspondence with Tesco formed part of the journalistic process and the broadcast reflected this.
  - iii) No further response was made regarding the editing of Tesco's statement.
  - iv) Regarding the reference to 'cutting and running', Channel 4 stated that Neil Kearney stated that Tesco "can't pull out" and there was no suggestion that Tesco was likely to, or would, cut and run either from his words or from the line of commentary which preceded them. Channel 4 therefore argued that there was no allegation which called for a right of reply. Furthermore this section was preceded by commentary which reported that "Tesco state there was no evidence of child labour." Channel 4 said it was therefore even more unlikely that viewers would have understood Tesco was likely to cut and run since Tesco had concluded there was no child labour in its factories.

### **Tesco's additional comments**

Tesco requested a reconsideration of the Fairness Committee's provisional finding on the complaint.

In summary, Tesco believed a reconsideration was justified as the Fairness Committee's Provisional Decision:

- a) Placed too great a weight on the Committee's conclusion that the testimony of specific witnesses (interviews with two child workers and an adult worker) in the report was "uncontested" given that Tesco could not contest the testimony of these witnesses because it did not know their identities. Tesco said that this was seriously misleading in that it suggested that it had accepted the evidence as true by not challenging it.

Tesco also argued that the Provisional Decision dismissed out of hand a bundle of documents it had provided which proved beyond reasonable doubt that the workers were not children. Ofcom had dismissed it on the ground that it is "not a fact finding tribunal", yet when Channel 4 relied on 'evidence' which

had not been provided either to Ofcom or to Tesco Ofcom classified it as “critical”. Tesco stated that this was unfair and saw this as one rule for the broadcaster and one rule for the complainant.

- b) Tesco said that the Provisional Decision was wrong to conclude that ‘sufficient information’ was given to Tesco by the broadcaster about the case against it, given that prior to the broadcast Channel 4 did not disclose the visual evidence (i.e. the covertly filmed material which was later included in the broadcast) that it relied upon to support the claim that “some young workers were clearly under fifteen”, despite the fact that these workers were not anonymised in the report.

With regard to the Decision in relation to head b) ii), Tesco stated that The Provisional Decision did not address the following factors when it concluded that the two week’s given to Tesco to respond to the allegations made about it was “not unreasonable”:

- the length of Channel 4’s investigation (which started in late June, three months before Tesco was informed about the programme);
- the fact that Tesco had to start its own investigation from scratch because the broadcaster would not disclose the identities of any of the child interviewees;
- the fact that Tesco was only informed which allegation related to which factory five working days prior to the broadcast; and,
- the reasonableness of Tesco’s request to Channel 4 on 2 October 2006 to hold off from contacting its suppliers until 6 October 2006.

With regard to the Provisional Decision in relation to head b) iii), Tesco stated that it entirely overlooked the crucial significance of the fact that its response to the broadcasters allegations included the point that Channel 4 “had not shared their evidence [with Tesco]”. Tesco said that this part of its response to the broadcaster would have informed viewers that the identity of sources used by Channel 4 had not been shown to Tesco. Tesco noted that the House of Lords judgment in *Reynolds v Times Newspapers* (“*Reynolds*”)<sup>1</sup> recognised that it may be permissible to use anonymous sources in public interest journalism but also recognised the risks this may entail.

### **Reconsideration decision**

Ofcom granted Tesco’s request for review on the basis that it had raised several points which may be arguable under the criteria set out in Ofcom’s guidelines, for example in relation to the weight attributed to the evidence and the adequacy of the reasoning which has been given for the decision. The request was also granted because the Committee Chairman believed it was in the interests of all parties for the issues raised to be considered by the Fairness Committee since they involved important matters of principle, particularly in relation to the balance of weight Ofcom attaches in its decision making to the evidence provided by each of the parties.

### **Channel 4’s comments in response**

In summary Channel 4 responded as follows:

---

<sup>1</sup> [2001] 2 AC 127 (HL)

- a) Channel 4 argued that the reference in the Provisional Decision to testimony from two child workers and an adult worker “which was uncontested by Carter-Ruck”, and the similar reference to the boy with a sewing needle, were entirely fair and accurate statements. The broadcaster noted that Tesco had not contested this on-camera evidence either before or since transmission. It said that it was clear that the Committee did not intend these words to mean that Tesco accepted this evidence or that the Committee believed that Tesco was in a position to contest it.

With regard to Tesco’s position that the Committee had unfairly dismissed its bundle of evidence in support of workers’ ages, Channel 4 argued that it was clear from its earlier submissions that this evidence could not be relied upon.

- b) Channel 4 argued that the issue regarding its decision not to provide its covertly recorded footage to Tesco prior to the broadcast had been dealt with in the submissions of both parties prior to the Committee’s consideration of the complaint and was not therefore a valid ground for reconsideration.

Nonetheless, the broadcaster reiterated its argument that it had complied with Practice 7.11 of the Code (opportunity to respond) in that Tesco was made fully aware of what the report’s allegations were going to be and was given an appropriate and timely opportunity in which to respond.

The broadcaster added that Tesco’s argument that it was caused unfairness because it was not given the opportunity to scrutinise, and to check and test, *Channel 4 News’* evidence in advance of transmission was unreasonable and was not what was required either by the Code or by the law. (Channel 4 noted that the test in the *Reynolds* case in relation to ‘reasonable journalism’ would not require footage to be handed over.)

With regard to Tesco’s comments on the Provisional Decision in relation to head b) ii), Channel 4 claimed that the complaint about the time given to Tesco to respond to the allegations had been dealt with previously.

However, the broadcaster contended that the explanation in the Provisional Decision regarding the opportunity to respond was wholly sufficient and made the following points:

Channel 4 was satisfied that the evidence corroborated the claims made by the child workers it interviewed were children and in its view they had no reason to be dishonest.

Channel 4 did not agree that the Committee had, as claimed by Tesco, indicated that it was unreasonable for Tesco to have asked Channel 4 on 2 October 2006 to hold off from contacting its suppliers until 6 October 2006. In Channel 4’s view it was reasonable for it to have refused this request for the reason originally given in the e-mail it sent in response to Tesco’s request. Namely, that it needed to contact the factories no later than noon on Wednesday 4 October 2006 to meet its plan to broadcast the report on 9 October.

Channel 4’s timetable had not been “fixed” as suggested by Tesco, and it had been careful to ensure that Tesco had all the allegations put to it and had ample opportunity to respond to them.

Channel 4 argued that the judgment in *Reynolds* suggests no minimum time for response to allegations and added that those who are the subject of allegations are frequently given only a few days or sometimes only hours to respond.

With regard to Tesco's comments on the Provisional Decision in relation to head b) iii), Channel 4 stated that the complaint about its editing of Tesco's response to the allegations had been dealt with previously. However, the broadcaster argued that the fact that it had not explicitly stated to viewers that it had "not shared their evidence [with Tesco]" did not result in unfairness to Tesco.

Channel 4 noted its belief that the statement in the Provisional Decision indicating that the on-camera evidence was "uncontested" was true, and said that even if this statement were not true it did not follow that viewers would have assumed that it had shared its evidence with Tesco before broadcast.

Channel 4 also noted that it did not promise Tesco that its response to the allegations would be included in full in the report. Rather, in its letter of 6 October 2006 inviting Tesco to supply a written statement, it had indicated that the response would be "fairly edited within the broadcast piece". Channel 4 added that broadcasters are only required to take from any statement what is needed in order to ensure fairness and that it was standard industry practice to edit such statements.

## Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment in programmes included in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

Tesco's complaint was reconsidered by Ofcom's Fairness Committee ("the Committee"), Ofcom's most senior decision making body with respect to Fairness and Privacy complaints. The Fairness Committee considered the complaint, the broadcaster's response, subsequent submissions from both parties, together with a recording and transcript of the programme as broadcast and a recording of untransmitted material in relation to the boy referred to by the programme as looking no more than eight. The Committee also considered Tesco's request for a review of the Provisional Decision and Channel 4's response to it.

In the circumstances of this case the Fairness Committee found the following:

Prior to considering the specific heads of complaint the Committee assessed the subject matter of the report and the nature of the programme in which it was included.

The Committee considered that the report did not allege that Tesco was deliberately or knowingly using child labour to produce its clothing. Rather, it considered that the report showed that companies supplying Tesco were employing workers who were

below the legal age limit in Bangladesh (i.e. aged under 14) and that some of these workers were producing clothes for Tesco.

The Committee noted that the introductory headlines and lead-in clearly referred to children working for/being employed by Tesco's **suppliers** without Tesco having been aware of the fact. This point was developed further in the main report which exposed the fact that there were factories supplying Tesco which deliberately flouted the ethical policies of western buyers. The report also presented evidence to show that these factories attempted to cover up the presence of child workers by making them lie about their age or by attempting to ensure they were not present at key times when buyers visited. This line of argument was apparent throughout the item and was made particularly clear by the testimony of the two child workers and the adult whistleblower from the Evinco Group factories. The Committee did not see the report as a detailed attack on Tesco alleging it used underage employees. Rather, in view of the above factors the Committee considered that it was clear that the report set out to highlight the fact that Tesco was unaware of what was happening and question its ability to enforce its much publicised ethical standards.

The Committee also assessed the likely expectations of the *Channel 4 News* audience when considering the context within which the allegations were presented. As the longest and most detailed of the primetime nightly news programmes on the public service television channels, *Channel 4 News* is an in depth one hour nightly news and current affairs programme known for its investigative reports, which often concern ethical issues. The Committee considered that viewers of *Channel 4 News* would have been familiar with the tone and style of this report, which was consistent with the approach taken by *Channel 4 News* in other reports of a similar nature. The Committee also considered, therefore, that viewers would have understood the nature of the allegations being made in this item. More specifically, the particular audience for this programme would have appreciated the nature of the allegations being made and that the central focus of the report was on Tesco's ability to maintain and enforce ethical standards which it very prominently publicised.

The Committee then turned to the specific heads of complaint.

- a) The Committee first considered Tesco's complaint that the programme featured footage and commentary which was unfair to it. The Committee considered this complaint in light of the requirement on broadcasters in Rule 7.1 of Ofcom's Broadcasting Code ("the Code") to avoid unjust or unfair treatment of individuals or organisations in programmes.

In its consideration of this complaint the Committee first turned to each of the individual complaints made:

- i) The Committee addressed Tesco's complaint that the programme repeatedly and unfairly featured footage of what the programme referred to as a "little boy...who looks no more than eight" when the boy in question was in fact 12, had no connection to the factory and was delivering lunch to his cousin.

The Committee took account of Practice 7.9 of the Code which states that before broadcasting a factual programme:

'broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.'

The Committee noted the footage of the boy, filmed covertly on a factory floor, and also noted the commentary used on each of the three occasions that the programme featured this footage. The commentary was as follows:

*“The profits are higher than ever, so are the store’s posted ethical standards. But tonight we expose the child labour working for Tesco’s suppliers.”*

*“A Channel 4 team has secretly filmed two established Bangladeshi suppliers for Tesco and found child labour.”*

*“Away from the main Tesco line amongst the boxes were more youngsters. And then we saw this little boy, with a needle in his hand, who looked no more than eight.”*

The Committee also viewed a recording of the untransmitted footage filmed of this particular boy.

The Committee noted that the broadcaster clarified in its submissions that it had not claimed in the report that the boy was working on Tesco products, but that the report did allege that the boy was working in a factory which supplied garments to Tesco. In the Committee’s view the untransmitted material provided by the broadcaster gave no further indication of the precise role of the boy at the factory.

In its considerations the Committee noted material provided by Carter-Ruck which stated that the boy was visiting the factory with food for his cousin. The Committee also noted that while Carter-Ruck challenged the programme’s claim that the boy was eight, it agreed that he was a child and stated that his age had been verified as 12.

The Committee’s role was not to establish conclusively from the broadcast programme, the untransmitted footage, or the submissions and supporting material, the age of the child in question but rather to address itself to the issue of whether the programme makers took reasonable care in relation to material facts as discussed in Practice 7.9 of the Code. This approach was supported by Mr Justice Stephen Brown in *R v Broadcasting Complaints Commission, Ex parte Thames Television Limited and Others* (“*Thames Television*”) in which he recognised that the primary concern and statutory duty of the Broadcasting Standards Commission (Ofcom’s predecessor in matters relating to the consideration of Fairness and Privacy complaints) was to ascertain whether what was broadcast was fair to the complainants, not whether what was broadcast was necessarily accurate.

The Committee was able to conclude that the material appeared to show a boy with a sewing needle in his hand, sitting amongst a group at work in a factory which supplies Tesco with garments. While it could not be said that this footage showed definitively that the boy was working at the factory, there was nothing in the footage or the rushes that had been submitted to Ofcom to support the contention that the boy was delivering lunch. In relation to this point, the Committee noted from Channel 4’s response that Neil Kearney of the International Textile, Garment and

Leather Workers' Federation had explained: "The delivering lunch story is as old as time. It used to be used in the East End of London 30 years ago when the factory inspectors raided sweatshops there [...]. The suggestion that such a child was delivering lunch would probably elicit the response, 'pull the other one' in Bangladesh." Taking all this into account the report's allegation that the boy was working at the factory did not appear unreasonable to the Committee.

In relation to the boy's age, the Committee observed that viewers were not told that he was eight but that "*he looked no more than eight*". In the circumstances this appeared to be a reasonable comment as it would be very difficult, if not impossible, to accurately determine the age of this boy (or any of the other factory workers for that matter) simply from looking at the footage. Certainly the boy appeared to be less than 14 years old and the Committee noted that the report had explained that: "*under Bangladeshi law it is illegal for children under fourteen to work in factories*". Significantly, the Committee also noted that Tesco itself accepted that the boy was under 14 as it had indicated in one of its submissions that he was 12. In its response to Channel 4's statement Tesco said that "the boy has been age verified by doctors from Marie Stopes Clinic" and in the 'bundle of evidence' supplied by Tesco he was listed as being "12 years old".

Having considered the above factors, the Committee went on to consider the wider context within which the footage of the boy was used; namely the report's allegations that child labour was being used in factories which supplied Tesco.

The Committee noted that the programme included interviews with two children working on a Tesco line within one of the Harvest Rich factories, and two child workers and an adult whistleblower who worked or had worked in Evinco Group factories which supplied Tesco. The testimony of these workers was used to support Channel 4's claims about the use of child labour, as illustrated by the footage of the boy.

These workers made the following comments:

First child worker (Harvest Rich Factory):

Boy: *"I am 12 years old."*

Commentary: *"He told us he worked as a machinist at Harvest Rich and that staff at the factory knew his age when he was hired."*

Boy: *"Yes they did ask me about my age. I said that I was eleven and a half years old and they took me in."*

Commentary: *"He went on to claim that he'd seen many child workers in the factory."*

Boy: *"In the whole of Harvest rich there will be around two hundred to three hundred child workers."*

Second child worker (Harvest Rich Factory):

Commentary: *"This girl also works on the Tesco line."*

Girl: *"I am 12 years old."*

Commentary: *"and she tells us how much she earns, the basic minimum wage, just £9 per month."*

First child worker - in response to questions about visits from western buyers:

Boy: *"When the buyer comes they send us home. If they are in the factory for a short time we are not sent home. We are hidden away on other floors and come back to work as soon as they leave."*

Third child worker (Harvest Rich Factory) - in response to questions about visits from western buyers:

Girl: *"The supervisor tells us to lie about our age and say that we are eighteen or nineteen."*

Fourth child worker (Evince Group Factory):

Girl: *"I am thirteen."*

Commentary: *"She told us that when she went for the job she lied about her age and said that she was eighteen but that her real age wasn't checked with documentation. Then she talked about how she felt about her job."*

Girl: *"I feel very bad after coming back home. I lie down on my bed."*

Senior adult worker (formerly at Evince Group Factory, now a whistleblower):

Man: *"Fifty percent of work in our factory is for the Tesco buyer. There are about thirty child labourers. Neither the management nor the Tesco buyer has yet audited this properly."*

Commentary: *"He went on to explain..."*

Man: *"The management didn't properly check about the child workers in our factory."*

In considering whether it was reasonable for the report to allege that child labour was being used by Tesco's suppliers the Committee considered the programme's use of anonymous testimonies. Channel 4 explained that it had concealed the identity of the witnesses to ensure they could not

be identified by their employers because of the risk that they would lose their jobs or be unable to find alternative employment.

The Committee noted that the courts have recognised that the use of anonymous sources in media reports can make it difficult for the subject of those allegations to respond. However, they have also recognised that a reliance on such sources can be an important and necessary part of the dissemination of news stories which are in the public interest. The Committee observed that this report had set out to show that Tesco's suppliers were using child labour in contravention of both Bangladeshi law and the ethical trading standards to which Tesco was a signatory. It also noted that the report had shown how these suppliers sought to hamper Tesco's enforcement of these ethical standards. Given the significance of these issues, the Committee considered there was a public interest in broadcasting the report.

Looking at the testimonies themselves, it was significant to note that that they were consistent and corroborated each other. It was also clear from Channel 4's response to the complaint that it had spoken to a number of other witnesses, including parents of some of the child workers, adult workers and independent witnesses and that these testimonies further supported the report's claims. These other witnesses had confirmed to Channel 4 that children had been seen arriving at these factories and leaving at the end of the day.

In considering the context of the report's reliance on the anonymous testimonies it was relevant to note the inclusion of a number of references within the report to Tesco's position in relation to the claims being made (this is discussed further below at head b)). As well as including sections of the statement Tesco provided to Channel 4 the report included a number of other references to Tesco's position. This included commentary which said that there was "no suggestion Tesco was aware of child workers in any of the factories visited". It also included the following statement from Jon Snow (the programme's presenter) in the opening headlines:

*"Tesco counter [the allegations] by saying they didn't know about the child workers; neither did they know that some of the factories were actually supplying them. They talk too of abhorring child labour."*

In addition, later on in the programme the reporter makes the following comment:

*"There's no suggestion that Tesco were aware of child workers at any of the factories we visited. In a statement Tesco told Channel 4 News that it: "abhors the use of child labour and are at the forefront of industry efforts to stamp it out through systematic investigations of its suppliers... On receipt of these allegations Tesco immediately made unannounced visits to the suppliers concerned in conjunction with independent auditors. And, Tesco state there was no evidence of child labour"*

The reporter then added that "Tesco also told us they have since issued the Evinco Group with a warning and put the Harvest Rich factories under review as a result of unauthorised production".

Taking all this into account, the Committee concluded that not revealing the identity of the witnesses was appropriate in the circumstances discussed above and was justified by the public interest in broadcasting the report.

On the basis of the Committee's considerations above in relation to the boy "who looked no more than eight" and in view of the wider context of the evidence and the context in which it was presented in the report, the Committee concluded that Channel 4 had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Tesco. The Committee therefore found that the inclusion of the footage and related commentary concerning this particular boy in the programme as broadcast did not result in any unfairness to Tesco.

- ii) The Committee next considered Tesco's complaint that the item featured an interview with Mr Kearney who stated that "children as young as eight" were working when it was evident that he was misled by the programme makers.

In its considerations the Committee again took account of Practice 7.9 of the Code.

The Committee noted the relevant part of the broadcast programme:

Commentary: *"We showed Neil Kearney, the head of the International Textile, Garment and Leather Workers' Federation, the [undercover] footage."*

Mr Kearney: *"No factory should be employing any worker under the age of fifteen. It's set down in all of the Codes of Conduct of the different companies that are sourcing in those particular factories so it's inexcusable that children as young as eight and children of 12, 13 should be working."*

In the Committee's view Mr Kearney, who was asked by the programme makers to comment on the untransmitted undercover footage shown to him, drew on his experience as head of the International Textile, Garment and Leather Workers' Federation in discussing the footage.

The Committee was satisfied both from the programme and from Channel 4's submissions that Mr Kearney was clear in his own mind what he made of the footage, and was giving his own views on that material. The Committee was satisfied that the programme drew on his comments, as an expert in this area, to explain the legal employment framework, notably that 15 is the minimum age at which a child should be employed, and then to make personal observations about the footage. In the Committee's view Mr Kearney was making a general statement that children aged less than 15 should not be working in factories. It observed that his comment that practices he saw were "inexcusable" endorsed the programme makers' view of the age of the workers filmed. However, it considered that this was an independent comment from an authoritative source and was appropriately presented as such.

The Committee therefore found that no unfairness resulted from the inclusion of Mr Kearney's comments.

- iii) + iv) The Committee next considered together Tesco's complaints that the programme gave special prominence to what it unfairly described as 12 "children" and that the programme identified a further 24 workers as "children" when all of these individuals were actually aged 18 or over.

In its consideration of these complaints the Committee again took account of Practice 7.9 of the Code.

As discussed above at Decision head a) i) the Committee's role was not to establish conclusively the ages of the factory workers but to consider whether the broadcaster took reasonable steps in relation to the presentation of material as discussed in Practice 7.9 of the Code and whether any unfair treatment resulted.

The Committee viewed the covertly recorded footage filmed in the factories and included in the programme. The Committee noted that the programme did give special prominence to some of the individual workers by circling their faces. It also noted the commentary which accompanied these images.

In the Committee's view the commentary line *"What was disturbing was how young many of the workers looked – some no more than 12 years old"* allowed viewers to make up their own minds about the age of the workers shown. However the commentary line *"Some young workers were clearly under 15 but it was difficult with others to be sure"* made a definitive statement that some workers were "clearly under 15." The Committee observed that the report included an explanation that the Ethical Trading Initiative ("the ETI"), a group to which Tesco belongs, sets 15 as the minimum age for workers in factories which adhere to its Code and, as noted above, the minimum legal age for workers in Bangladesh is 14.

The submissions and supporting evidence to which the Committee had regard in relation to this head of the complaint included the material provided by Carter-Ruck (employment records and age estimations from Marie Stopes Clinic doctors in relation to the individuals referred to in these complaints) and the evidence from Channel 4's investigation (in particular the evidence from the witnesses whose testimony was included in the programme). The Committee noted that the material provided by Carter-Ruck conflicted with the evidence from Channel 4's investigation.

As stated in head a) i) above, the Committee's role in considering the evidence was not to establish conclusively from the broadcast programme, the untransmitted footage, or the submissions and supporting material, the age of the workers in question (which it was unable to do) but rather to address itself to the issue of whether the programme makers took reasonable care in relation to material facts as discussed in Practice 7.9 of the Code. The Committee's primary concern was to ascertain whether what was broadcast was fair to Tesco.

As before, the Committee considered the practical difficulty of accurately assessing the age of the individual workers featured in the report on the

basis of external appearances alone. The Committee further acknowledged that the task of assessing workers' ages was likely to be even more difficult in a country which does not have a compulsory and effective registration of births and where individuals have little or no independent verification of their age.

The Committee considered whether the programme makers took reasonable care to satisfy themselves that material facts were not presented, disregarded or omitted in a way that was unfair to Tesco. As in head a) i) above, it noted that the individual testimonies included in the programme corroborated each other (i.e. the testimonies of the three workers who stated that they were either 12 or 13 years old, the girl who said she was told to lie about her age to visiting buyers and the adult whistleblower who indicated that there were many child workers in the factory where he had worked). The Committee observed that in terms of the broadcaster's position, this factor was significant as it demonstrated that the testimonies supported the claims made about Tesco in the programme. The Committee considered Channel 4's reliance on the use of anonymous sources was appropriate for the reasons set out at head a) i). As explained under head a) i) the Committee also considered it was significant that Tesco's position in relation to the allegations had been made clear throughout the programme.

In view of these factors and taking account of its findings in relation to head a) i), the Committee considered that Channel 4 had taken reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Tesco in relation to the prominence given to the 12 workers described as "children" in the report.

Turning to head a) iv) of the complaint, the Committee considered that the workers referred to (i.e. the 24 workers whose faces had not been highlighted), happened to be part of the material which was covertly filmed. Given that their faces were not highlighted in the report, the Committee was satisfied that Channel 4 did not assert that these specific individuals looked as if they were under-age workers.

In any event, the Committee considered that by noting the general difficulty in determining the age of many of the factory workers, the report had invited viewers to make up their own minds on the age of any of the individuals shown, including these 24 workers.

In light of these considerations the Committee found that no unfairness resulted to Tesco from the inclusion in the report of either the workers whose faces were highlighted to denote that they appeared to be under the legal age to work in a factory, or the other factory workers who were included in the footage.

- v) The Committee then addressed itself to Tesco's complaint that the programme unfairly alleged that it demonstrated a 'don't care attitude' by visiting only two out of the four factories referred to, when Tesco had informed the programme makers that it had visited all four.

In its considerations the Committee again took account of Practice 7.9 of the Code.

The Committee noted the relevant sections of the item:

Introduction: *“As a result of our investigation Tesco said it had made unannounced visits to two of the four factories.”*

Commentary: *“Tesco has since told us that they made unannounced visits but only at two of the four factories that we went to”.*

The Committee noted that as with head a) i, iii, and iv above, its role was to consider whether the programme makers took reasonable steps to ensure that material facts relating to this matter were not presented unfairly.

The Committee noted that the report twice stated that Tesco had made unannounced visits to two of the four factories which had been featured in the report. The Committee considered that in light of the allegations made in the report it was relevant for the item to make special reference to the ‘unannounced’ visits. In its view this statement was a reasonable encapsulation of the information supplied to Channel 4 by Carter-Ruck. This stated that while it had made a total of five factory visits following receipt of the allegations from Channel 4, two of these were unannounced visits to the factories featured in the programme. The Committee observed that the report had explained that Tesco had an audit procedure, that its buyers have to attend a course called ‘buying with your eyes open’ and that their job descriptions require them to consider ethical standards when buying. The Committee also recognised that the report made it clear that the suppliers acted to circumvent Tesco’s efforts to ensure that its ethical standards are maintained.

Taking these factors together, the Committee considered that at no time did the report indicate that Tesco took a ‘don’t care attitude’ to the allegation that children were working in factories which supplied it with clothing by visiting two of the four factories in the report.

The Committee therefore found that no unfairness resulted from the inclusion in the programme of this material.

In light of the findings at heads i) to v) above the Committee found that the programme did not result in unfair treatment of Tesco as complained of at Decision head a) above.

- b) The Committee next turned to Tesco’s complaint that it was not given a timely or appropriate opportunity to respond to allegations made in the programme.

In its consideration of this complaint the Committee first turned to each of the individual complaints made:

- i) The Committee first considered Tesco’s complaint that it was refused an opportunity to participate in either a live or recorded interview and was told it could only provide a brief statement in response to the allegations made.

The Committee took account of Practice 7.11 of the Code which states that:

'If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.'

The Committee noted that the allegation that Tesco was unable to ensure that its suppliers met its ethical standards by not employing child labour was extremely serious and that therefore it was incumbent upon the broadcaster to provide Tesco with an opportunity to respond to these allegations. The issue of timeliness of the opportunity to respond is dealt with at the Decision at head b) ii) below.

The Committee observed that an opportunity to respond to these allegations was given to the complainant via an e-mail sent to Tesco by the producer of this report on 27 September 2006. This e-mail detailed the nature of the report, the information that had been gathered at the Harvest Rich and Evince Group factories and asked Tesco a series of questions relating to these matters. The Committee noted that on the 5 October 2006 Carter-Ruck wrote a letter to Channel 4 on behalf of Tesco. While this letter expressed Tesco's dissatisfaction with the time it had been given to investigate the allegations made about the factories which supplied it in Bangladesh it was significant that the letter nevertheless included a response to the allegations that had been put to Tesco in Channel 4's e-mail.

The Committee recognised that in its first letter to Tesco (written on 27 September 2006) the broadcaster had offered Tesco an opportunity to respond by way of an on-camera interview and that there had been some further correspondence between the parties (notably an e-mail sent from the broadcaster to Tesco on 2 October 2006) which discussed options concerning a pre-recorded interview, a written statement or a live interview. However, it also recognised that it had not been incumbent on Channel 4 to offer Tesco either a live or pre-recorded interview but rather an appropriate and timely opportunity to respond. Further, the Committee noted that while Channel 4 did appear to have offered a live interview (time permitting on the day of broadcast) in its e-mail of 2 October 2006 Carter Ruck did not indicate that Tesco had any interest in taking up this offer in its letter of 5 October 2006.

The Committee noted that nothing in the correspondence suggested that the broadcaster sought to limit Tesco to a brief statement (the editing of the statement is dealt with separately below at Decision head iii) below).

In light of the above considerations the Committee found that Tesco was given an appropriate and timely opportunity to respond to the allegations made in the programme (see also head b) ii) below).

- ii) The Committee next considered Tesco's complaint that it was given only two weeks notice in which to launch an investigation and the programme makers refused to disclose its evidence to Tesco.

In its considerations the Committee again took account of Practice 7.11 of the Code as discussed at Decision head b) i) above. It again noted that significant allegations were made about Tesco and therefore considered whether it was given an appropriate and timely opportunity to respond.

The Committee noted that on the 27 September 2006 the broadcaster gave Tesco detailed information about the allegations it would make in its report (which was then unscheduled) and asked for Tesco's response by 6 October 2006.

It observed that Tesco asked for further details of the factories visited by *Channel 4 News* on 29 September 2006 and was e-mailed clarification by *Channel 4 News* at 1845 on the same day.

The Committee considered that the length of time taken by the programme maker to produce the report was not key to the issue of the timeliness of the opportunity to respond. Rather, in its view the factors which were relevant were the nature of the allegations and the appropriateness of the time given to Tesco to respond to them.

The Committee noted that a news programme will often need to ask a company for a response to an allegation within a short space of time (sometimes minutes or hours). However, in this case because the report was the result of an in-depth investigation, rather than a story which had just come to light, *Channel 4 News* gave Tesco nine days to respond to its initial e-mail of 27 September 2006 and supplied further information to Tesco about the factories it had visited on the day it was requested. In addition, on 2 October 2006, *Channel 4 News* responded to Tesco's request that it delay contacting the Harvest Rich and Evinco Group factories until 6 October 2006 explained to Tesco that it could not delay contacting the Harvest Rich and Evinco Group factories until 6 October 2006 in order facilitate its wish to make announced visits to the two factories it had not known were supplying it with clothing. *Channel 4 News* explained that it could not do this because the report was then scheduled for 9 October 2007 (it was actually broadcast on 10 October 2006). However, when on 6 October 2006 Tesco indicated that it did not wish to take part in an on camera interview *Channel 4 News* extended the deadline for Tesco's response until the morning of 9 October 2006 in order to enable it to provide a further written response to the allegations should it wish to do so.

The Committee noted that Tesco is a very large company with extensive resources; that it has representatives located in Bangladesh; and, that, given its established connections, it did not, as claimed by Carter-Ruck in its request for a reconsideration of Tesco's complaint, have to start its own investigation into the factories featured in the report from scratch. Therefore, the Committee considered that it was not unreasonable to expect Tesco to have been able to conduct unannounced visits to factories operated by its suppliers within days.

Taking into account the factors noted above, the Committee considered that *Channel 4 News* had responded promptly to Tesco's queries and that the time it had given to Tesco to respond to its allegations was not unreasonable.

In relation to the disclosure of 'evidence' the Committee noted that broadcasters are not required to disclose their evidence prior to broadcast. The obligation on broadcasters is to be fair in their dealings with those about whom significant allegations are made. The Committee also noted that in order to do this it is generally necessary that

broadcasters make clear the nature of their allegations and provide an appropriate and timely opportunity to respond to them. Having reviewed the correspondence between the parties the Committee considered that sufficient information about the programme's investigation and the allegations about the factories which supplied clothing to Tesco was given to the complainant prior to the broadcast, to ensure that it had an appropriate opportunity to respond.

In light of the above considerations the Committee found no unfairness to Tesco in regard to either the notice period or the information about the report given to Tesco by *Channel 4 News* prior to broadcast.

- iii) The Committee next considered Tesco's complaint that its statement in response to the allegations made in the programme was unfairly edited, and made to appear demonstrably false by the programme's allegation that Tesco made unannounced visits to only two out of the four factories referred to.

The Committee took account of Practice 7.6 of the Code which states that:

'When a programme is edited, contributions should be edited fairly.'

The Committee noted that the statement provided to the programme makers for inclusion in the programme was as follows:

*"Tesco abhor the use of child labour and are at the forefront of industry efforts to stamp it out through systematic investigations of its suppliers. This is why Tesco find it extraordinary that Channel Four waited four months before telling Tesco about these allegations and have still not shared their evidence. However, on receipt of these allegations Tesco immediately made unannounced visits to the suppliers concerned in conjunction with independent auditors. They found no evidence of any use of child labour. Tesco asked Channel Four if they could come on to the programme to discuss the allegations and were disappointed Channel Four refused".*

The Committee also noted the relevant section in the broadcast programme:

Commentary: *"In a statement Tesco told Channel 4 News that it abhors the use of child labour and is at the forefront of industry efforts to stamp it out through systematic investigations of its suppliers. On receipt of these allegations Tesco immediately made unannounced visits to the suppliers concerned in conjunction with independent auditors. And Tesco stated there was no evidence of child labour."*

The editing of material is a matter of editorial judgement for the broadcaster, the Committee's concern therefore lay with whether the editing resulted in unfairness to Tesco. In the Committee's view the reference removed from the original statement, in relation to *Channel 4 News* waiting "four months before telling Tesco about these allegations", was not germane to the allegations themselves. Furthermore the

reference in relation to Tesco asking to come on to the programme and being disappointed when *Channel 4 News* refused, did not accord with the correspondence in relation to this as discussed above at Decision head b) i). In the Committee's view the editing of the statement did not therefore result in unfairness to Tesco.

The Committee also noted that the statement was immediately preceded by the following:

Commentary: *"Tesco has since told us that they made unannounced visits but only at two of the four factories that we went to. There is no suggestion Tesco were aware of child workers at any of the factories we visited."*

As discussed at head a) v) above the reference to unannounced visits did not result in unfairness to Tesco. The Committee also noted that the statement regarding unannounced visits did not immediately precede Tesco's statement. Rather it was followed by commentary which said that there was *"no suggestion Tesco was aware of child workers"* in any of the factories visited. In the Committee's view this line of commentary fairly balanced and expanded on the reference to unannounced visits. The Committee also noted that there were numerous other references to Tesco's position throughout the programme.

In light of the above considerations the Committee found that no unfairness to Tesco resulted from the editing or positioning of its statement.

- iv) The Committee then considered Tesco's complaint that the programme unfairly suggested that it might be *"cutting and running"* from factories with problems without putting this allegation to Tesco for a response.

In its considerations the Committee again took account of Practice 7.11 of the Code as discussed at Decision head b) i) above.

The Committee noted the relevant section of the programme:

Commentary: *"Neil Kearney an expert on workers rights explains what should happen."*

Mr Kearney: *"They can't pull out. Pulling out is known as cutting and running and that's actually worse than sourcing from a factory that has problems"*.

The Committee considered that Mr Kearney was setting out the moral difficulties in this area. The Committee also noted that this section was immediately preceded by commentary which stated that Tesco had informed the programme makers that they had taken steps in relation to the factories shown and had *"issued the Evinco Group with a warning and put the Harvest Rich factories under review as a result of the unauthorised production."*

In this context the Committee was satisfied that the programme, which discussed what Tesco was actually doing in relation to the factories, did not allege that Tesco would or might 'cut and run' from the factories

investigated by the programme. Since the Committee concluded that no allegation of 'cutting and running' was made in the programme, it did not therefore go on to consider the issue of an appropriate and timely opportunity to respond in relation to this comment.

The Committee therefore found that no unfairness resulted to Tesco in this regard.

In light of the findings at heads i) to iv) above the Committee found that the programme did not result in unfair treatment of Tesco as complained of at Decision head b) above.

**The complaints of unfair treatment were not upheld.**

## Other Programmes Not in Breach/Out of Remit

5 to 18 February 2008

Programme	Trans Date	Channel	Category	No of Complaints
A Girl's Guide to 21st Century Sex	10/02/2008	Five Life	Sex/Nudity	1
A Haunting	06/02/2008	Discovery Science	Inaccuracy/Misleading	1
Air Crash Investigation	06/12/2007	National Geographic	Violence	1
Alan Carr's Celebrity Ding Dong	01/02/2008	Channel 4	Generally Accepted Standards	3
Alan Carr's Celebrity Ding Dong	01/02/2008	Channel 4	U18's in Programmes	1
Alan Carr's Celebrity Ding Dong	01/02/2008	Channel 4	Substance Abuse	1
All Star Family Fortunes	08/12/2007	ITV1	Generally Accepted Standards	2
America's Smartest Model	21/01/2008	MTV1	Animal Welfare	1
Andy Jackson	19/01/2008	Wave 105	Generally Accepted Standards	1
BBC Breakfast	24/01/2008	BBC1	Generally Accepted Standards	1
BBC News	04/02/2008	BBC1	Generally Accepted Standards	1
BBC News	04/02/2008	BBC1	Violence	3
BBC News	12/02/2008	BBC1	Due Impartiality/Bias	1
BBC News 24	26/01/2008	BBC News 24	Generally Accepted Standards	1
BBC West Midland	27/12/2007	BBC West Midland	Generally Accepted Standards	1
Ballet Shoes	26/12/2007	BBC1	Substance Abuse	1
Big Brother's Little Brother	17/01/2008	E4	Generally Accepted Standards	1
Big Brother: Celebrity Hijack Live	23/01/2008	E4	Generally Accepted Standards	1
Big Fight Live	02/02/2008	ITV1	Advertising	1
Big Brother's Big Mouth	28/01/2008	E4	Generally Accepted Standards	1
Box@Breakfast	23/07/2007	The Box	Use of Premium Rate Numbers	1
CNBC Europe	03/01/2008	CNBC Europe	Offensive Language	1
CSI: Crime Scene Investigation	12/02/2008	Five US	Other	2
CSI: Crime Scene Investigation	12/02/2008	Five	Scheduling	1
CSI: Crime Scene Investigation	12/02/2008	Five US	Generally Accepted Standards	1

Central News	10/01/2008	ITV1	Generally Accepted Standards	1
Chris Moyles Show	01/02/2008	BBC Radio 1	Generally Accepted Standards	1
Chute	22/01/2008	BBC2	Dangerous Behaviour	1
Cirque de Celebrite	09/12/2007	Sky One	Competitions	1
City Of Vice	14/01/2008	Channel 4	Generally Accepted Standards	1
City of Vice	28/01/2008	Channel 4	Offensive Language	1
Clocking Off (trailer)	03/02/2008	ITV1	Violence	1
Comedy Live Presents:- Russell Brand & Friends	25/01/2008	Channel 4	Generally Accepted Standards	9
Comedy Showcase: Kevin Bishop	10/02/2008	E4	Generally Accepted Standards	1
Coronation Street	25/01/2008	ITV1	Generally Accepted Standards	8
Dancing on Ice	10/02/2008	ITV1	Generally Accepted Standards	1
Dancing on Ice	03/02/2008	ITV1	Generally Accepted Standards	4
Derren Brown: The System	01/02/2008	Channel 4	Inaccuracy/Misleading	1
Derren Brown: The System	01/02/2008	Channel 4	Generally Accepted Standards	1
Dispatches - The Truth About Your Food	10/01/2008	Channel 4	Due Impartiality/Bias	3
Dispatches: Why Kids Kill	28/01/2008	Channel 4	Other	3
Ditchy	28/01/2008	Real Radio Yorkshire	Generally Accepted Standards	1
Doctors	24/01/2008	BBC1	Sex/Nudity	1
Doctors	24/01/2008	BBC1	Generally Accepted Standards	1
Down The Line	31/01/2008	BBC Radio 4	Animal Welfare	1
Duel	02/02/2008	ITV1	Inaccuracy/Misleading	2
E4 Trailer	03/02/2008	E4	Generally Accepted Standards	1
EastEnders	21/01/2008	BBC1	Crime (incite/encourage)	1
EastEnders	17/01/2008	BBC1	Crime (incite/encourage)	3
EastEnders	18/01/2008	BBC1	Generally Accepted Standards	2
EastEnders	21/01/2008	BBC1	Generally Accepted Standards	1
EastEnders	22/01/2008	BBC1	Violence	4
EastEnders	21/01/2008	BBC1	Sex/Nudity	1
EastEnders	05/02/2008	BBC1	Generally Accepted Standards	1
EastEnders	04/02/2008	BBC1	Generally Accepted Standards	1

EastEnders	29/01/2008	BBC1	Offensive Language	2
Emmerdale	04/02/2008	ITV1	Religious Offence	1
Emmerdale	11/01/2008	ITV1	Generally Accepted Standards	1
Emmerdale	28/01/2008	ITV1	U18's in Programmes	1
Evacuation Manor House	25/01/2008	BBC1	U18's in Programmes	1
Expats under Attack: Tonight	28/01/2008	ITV1	Due Impartiality/Bias	1
Extreme Dreams with Ben Fogle	01/02/2008	BBC2	Dangerous Behaviour	1
F1: 2007 Season Review	31/12/2007	ITV4	Competitions	1
Fifth Gear	21/01/2008	Five	Dangerous Behaviour	3
Fifth Gear	26/01/2008	Five	Competitions	1
Fifth Gear	28/01/2008	Five	Religious Offence	1
Five News	20/11/2007	Five	Due Impartiality/Bias	1
Football League	19/01/2008	Sky Sports 1	Advertising	1
Friday Night With Jonathan Ross	18/01/2008	BBC1	Generally Accepted Standards	1
GMTV	05/02/2008	ITV1	Generally Accepted Standards	1
GMTV	07/02/2008	ITV1	Offensive Language	1
Gardener's Question Time	10/10/2007	BBC Radio 4	Generally Accepted Standards	2
Gardener's Question Time	07/10/2007	BBC Radio 4	Generally Accepted Standards	3
George Galloway	19/01/2008	Talksport	Religious Offence	1
George Galloway	02/11/2007	Talksport	Undue Prominence	1
George Galloway	05/01/2008	Talksport	Generally Accepted Standards	1
Goldenballs	11/02/2008	ITV1	Generally Accepted Standards	1
Goldenballs	11/02/2008	ITV1	Crime (incite/encourage)	2
Gordon Ramsay: Cooking Live	20/01/2008	Channel 4	Sex/Nudity	1
Grand Designs	16/01/2008	Channel 4	Religious Offence	1
Harry Hill's TV Burp	02/02/2008	ITV1	Generally Accepted Standards	7
Harry Hill's TV Burp	26/01/2008	ITV1	Generally Accepted Standards	2
Hollyoaks	16/11/2007	Channel 4	Violence	1
Hollyoaks	03/02/2008	Channel 4	Substance Abuse	1
Honest	09/01/2008	ITV1	Religious Offence	2
Honest	23/01/2008	ITV1	Sex/Nudity	1
Honest	09/01/2008	ITV1	Generally Accepted Standards	2
Honest	06/02/2008	ITV1	Offensive Language	1
Honest	30/01/2008	ITV1	Sex/Nudity	4
Horizon: How To Kill A Human Being	15/01/2008	BBC2	Generally Accepted Standards	1

Hot Hits Non Stop	31/01/2008	The Hits TV	Use of Premium Rate Numbers	1
I Didn't Know That	22/01/2008	National Geographic	Dangerous Behaviour	1
ITV News	19/01/2008	ITV1	Generally Accepted Standards	1
ITV News	10/01/2008	ITV1	Inaccuracy/Misleading	1
ITV News	03/02/2008	ITV1	Inaccuracy/Misleading	1
ITV News	10/01/2008	ITV1	Animal Welfare	1
ITV News	03/02/2008	ITV1	Due Impartiality/Bias	1
ITV News	14/01/2008	ITV1	Inaccuracy/Misleading	1
ITV News (trailer)	27/01/2008	ITV1	Generally Accepted Standards	1
ITV News (trailer)	28/01/2008	ITV1	Generally Accepted Standards	1
Johnny Vaughan	14/12/2007	Capital 95.8FM	Substance Abuse	1
Jon Gaunt	11/01/2008	Talksport	Commercial References	1
Jon Gaunt	16/01/2008	Talksport	Generally Accepted Standards	1
Jon Gaunt	23/01/2008	Talksport	Religious Issues	1
Jonathan Ross	19/01/2008	BBC Radio 2	Generally Accepted Standards	1
Judy Spiers	15/01/2008	BBC Radio Devon	Generally Accepted Standards	1
Kill It, Cook It, Eat It	31/01/2008	BBC3	Animal Welfare	1
Little Miss Jocelyn	24/01/2008	BBC2	Offensive Language	2
Little Miss Jocelyn	17/01/2008	BBC2	Generally Accepted Standards	1
Little Miss Jocelyn	10/01/2008	BBC2	Generally Accepted Standards	1
Little Miss Jocelyn	17/01/2008	BBC2	Offensive Language	1
Long Way Round	11/02/2008	Sky Three	Animal Welfare	1
Made in Britain promo	-	Paramount Comedy	Generally Accepted Standards	2
Maltesers sponsorship of Loose Women	-	ITV1	U18's in Programmes	1
Midlands Today	17/01/2008	BBC1 (Midlands)	Generally Accepted Standards	1
Midsomer Murders	01/01/2008	ITV1	Sex/Nudity	1
Mike Mendoza	03/02/2008	Talksport	Generally Accepted Standards	1
Mock the Week...Again!	12/02/2008	BBC2	Generally Accepted Standards	1
Moving Wallpaper	18/01/2008	ITV1	Generally Accepted Standards	1
My Spy Family (trailer)	25/01/2008	Boomerang	Dangerous Behaviour	1
Neil and Debbie at Breakfast	29/01/2008	Gaydar Radio	Generally Accepted Standards	1
Never Mind The Buzzcocks	17/01/2008	BBC2	Generally Accepted Standards	1

News	02/12/2007	NDTV 24x7	Violence	1
News	01/12/2007	NDTV 24x7	Violence	1
News Update	04/02/2008	BBC1	Inaccuracy/Misleading	1
Newsnight	30/01/2008	BBC2	Generally Accepted Standards	1
Nuts	19/01/2008	CBBC	Generally Accepted Standards	1
O'Reilly Factor	04/02/2008	Fox News	Generally Accepted Standards	1
Only An Excuse	31/12/2007	BBC Scotland	Generally Accepted Standards	1
Paradise or Bust	21/01/2008	BBC2	Animal Welfare	1
Police, Camera, Action	11/02/2008	ITV4	Dangerous Behaviour	1
Premier League Football	20/10/2007	Setanta 1	Other	1
Primeval	26/01/2008	ITV1	Dangerous Behaviour	2
Primeval	26/01/2008	ITV1	Generally Accepted Standards	1
Quiz Call	11/01/2008	Five	Competitions	4
Radio Asian Fever	13/09/2007	Radio Asian Fever	Due Impartiality/Bias	1
Radio City	02/02/2008	City Talk	Format	1
Richard and Judy	21/01/2008	Channel 4	Animal Welfare	3
Richard and Judy	04/02/2008	Channel 4	Generally Accepted Standards	1
Richard and Judy	21/01/2008	Channel 4	Sex/Nudity	1
Richard Bacon	07/02/2008	BBC Radio 5 Live	Commercial References	1
Richard and Judy	08/01/2008	Channel 4	Animal Welfare	4
Richard and Judy	29/01/2008	Channel 4	Crime (incite/encourage)	1
Ross Kemp in Afghanistan	21/01/2008	Sky One	Generally Accepted Standards	1
Roy Chubby Brown: Britain's Rudest Comedian	07/02/2008	Channel 4	Generally Accepted Standards	1
Sam and Amy	29/01/2008	Heart 106	Offensive Language	1
Saturday Kitchen	09/02/2008	BBC1	Undue Prominence	1
Scams, Fiddles and Honest Claims	31/01/2008	Channel 4	Undue Prominence	1
Sex with Mum and Dad	03/02/2008	BBC3	Generally Accepted Standards	1
Shameless	13/02/2008	Channel 4	Generally Accepted Standards	1
Sharpe	28/12/2007	UKTV History	Advertising	1
Simon Cowell - American Idol	17/01/2008	ITV2	Substance Abuse	1
Skins (trailer)	20/01/2008	Channel 4	Generally Accepted Standards	1
Sky News	20/01/2008	Sky News	Inaccuracy/Misleading	1

Sky News	02/02/2008	Sky News	Generally Accepted Standards	1
Sky Sports Interactive	09/02/2008	Sky News	Due Impartiality/Bias	1
Soccer Night	02/01/2008	ITV1 (Yorkshire)	Offensive Language	1
Sonia Deol	22/01/2008	BBC Asian Network	Crime (incite/encourage)	1
South Park	01/02/2008	MTV One	Generally Accepted Standards	1
Stargate Atlantis	12/01/2008	TV6 (Sweden)	Violence	1
Stephen Nolan	11/01/2008	BBC Radio 5 Live	Generally Accepted Standards	1
Summerhill	23/01/2008	BBC1	Violence	1
Supernatural (trailer)	19/01/2008	ITV2	Generally Accepted Standards	1
Supersize vs Superskinny	22/01/2008	Channel 4	Sex/Nudity	1
Supersize vs Superskinny	29/01/2008	Channel 4	Sex/Nudity	3
Supersize vs Superskinny	05/02/2008	Channel 4	Sex/Nudity	2
Thank God You're Here	12/01/2008	ITV1	Religious Offence	3
Thank God You're Here	19/01/2008	ITV1	Religious Offence	1
The Allan Lake Show	15/01/2008	Red Dragon FM	Generally Accepted Standards	1
The Bigger Breakfast	08/01/2008	City Beat 96.7FM	Commercial References	1
The Bill	30/01/2008	ITV1	Inaccuracy/Misleading	1
The Dead Sea Scrolls	09/02/2008	BBC2	Religious Offence	1
The Friday Play: Sins of the Grandfathers	01/02/2008	BBC Radio 4	Generally Accepted Standards	1
The Jeremy Kyle Show	25/01/2008	ITV1	Generally Accepted Standards	1
The Jeremy Kyle Show	31/01/2008	ITV1	Generally Accepted Standards	1
The National Lottery: In It to Win It	09/02/2008	BBC1	Generally Accepted Standards	1
The ONE Show	29/01/2008	BBC1	Sex/Nudity	1
The Royal Variety Performance	09/12/2007	ITV1	Other	1
The Wright Stuff	30/01/2008	Five	Generally Accepted Standards	1
Toonatik	16/12/2007	ITV1	Generally Accepted Standards	1
Top Gear	25/11/2007	BBC2	Generally Accepted Standards	1
Torchwood	30/01/2008	BBC3	Generally Accepted Standards	1
Torchwood	24/01/2008	BBC2	Violence	1

Torchwood	30/01/2008	BBC2	Sex/Nudity	1
Torchwood	31/01/2008	BBC2	Sex/Nudity	3
Torchwood	23/01/2008	BBC2	Generally Accepted Standards	4
Torchwood	23/01/2008	BBC2	Violence	3
Trial and Retribution	14/02/2007	ITV1	Sex/Nudity	1
Trial and Retribution	31/01/2008	ITV1	Substance Abuse	1
Trinny and Susannah Undress the Nation	01/02/2008	ITV2	Generally Accepted Standards	1
Victoria Derbyshire	24/01/2008	BBC Radio 5 Live	Generally Accepted Standards	1
Weakest Link	01/02/2008	BBC2	Sex/Nudity	1
Weakest Link	01/02/2008	BBC2	Generally Accepted Standards	1
Weakest Link	19/01/2008	BBC1	Generally Accepted Standards	2
Wedding Crashers	27/01/2008	C4	Generally Accepted Standards	1
Weekender	05/01/2008	MTV Dance	Generally Accepted Standards	1
Who Wants to be a Millionaire	12/01/2008	ITV1	Competitions	1
You Are What You Eat	18/10/2007	TV3 Sweden	Generally Accepted Standards	1
Young Guns II	27/01/2008	Five	Generally Accepted Standards	1
The Tim Shaw and Kate Lola Show	15/02/2008	Kerrang Radio	Other	1